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COLLECTIONS

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THE
CONSTITUTION AND GOVERNMENT
OF THE
PROVINCE AND STATE OF
NEW JERSEY,
WITH
BIOGRAPHICAL SKETCHES OF THE GOVERNORS
FROM 1776 TO 1845.
AND
REMINISCENCES OF THE BENCH AND BAR,
DURING MORE THAN HALF A CENTURY.

BY
LUCIUS Q. C. ELMER, LL. D.
LATE ONE OF THE JUSTICES OF THE SUPREME COURT OF NEW JERSEY.

NEWARK, N. J.
MARTIN R. DENNIS AND COMPANY.
1872.

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PREFACE.

THE Reminiscences contained in this volume were commenced at the request of the late Judge Field, when president of the New Jersey Historical Society, and portions of them were read at meetings of the society in 1870. Having thus commenced, it was proposed that I should complete such a history of the judiciary of the State as would make a proper sequel to the "Provincial Courts of New Jersey," prepared by Mr. Field, and published by the society in 1849. This I have undertaken; and at his suggestion I have written with entire freedom, and have expressed without reserve my individual opinions respecting the men and measures introduced, so as to give to the best of my ability an authentic history of the age in which I have lived, so far as that history related to the men who have belonged to the bench and bar of New Jersey. Any further notice of Judge Field himself has been rendered unnecessary by the extended memoir of him written by Mr. Keasbey, and published by the society.

Having retired from office and from professional pursuits, I have had leisure which I thought would not be wasted by endeavoring to preserve for those

who shall come after us a reliable account of those who have preceded us, and finished their labors in the same sphere of duty. With only the exceptions of Governors Vroom and Haines, who have been introduced for the sake of making complete biographical sketches of the governors since the Revolution, who were a part of the judiciary of the State, all the individuals commemorated have passed away. All the judges of the state courts, who have held office since the Revolution, and who are not still living, have been noticed with more or less particularity.

Some of the persons of whom I have written held opinions on the political topics of the day in the main agreeing with my own; while others belonged to a different party, and differed from me on many important subjects. My earnest endeavor has been to do equal justice to all. With all personally known to me, my relations have been altogether friendly; and I have kept in mind that while holding firmly to my own opinions, those differing from me were equally entitled to adhere to theirs, and that it is quite possible they were right and I was wrong. My hardest task has been to avoid mere eulogy, and to give, as far as possible, a correct impression of the true character of each individual as he appeared to me, of course touching lightly on faults, of which we all have enough, and giving full prominence to whatever seemed to me commendable.

For the purpose of making more complete the judicial history of the State, I have introduced an ac-

count of the constitution and government of the colony while it was a province of Great Britain, and a history of the constitution formed in 1776. A careful study of these histories will show us that our state and our federal republics, on the excellence of which we so justly pride ourselves, are not mushroom growths which sprung up in a night, and are therefore liable to perish in a day, but that they have been the slow and sure growths of nearly two centuries of experience, the germs of which are found in the sound principles of the common law brought with them by our English forefathers. The constitution of 1776 was defective, in blending the duties of the executive and the judiciary; but this defect was much relieved, and perhaps quite remedied, by the fact that while it existed the governors were necessarily men learned in the law, and thus the State commenced its independent career, and for years had the benefit of rulers having high qualifications for the office.

I have also added, by way of Appendix, a short account of the **TITLES TO LAND**, as held in New Jersey, originally prepared for Nixon's Digest, which I trust will be found interesting and useful, not only to lawyers, but to proprietors generally.

BRIDGETON, *January 1, 1872.*

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CHAPTER I.

CONSTITUTION AND GOVERNMENT OF THE PROVINCE OF NEW JERSEY.

THE government of New Jersey was first established by the proprietors, who claimed to derive the right from the grant of the Duke of York. Berkeley and Carteret, his grantees, framed, or had framed for them, in England, a constitution, which was engrossed on a parchment roll and signed by them, February 10, 1664, under the title of "The Concession and Agreement of the Lords Proprietors of the Province of New Cæsaria or New Jersey, to and with all and every the Adventurers, and all such as shall settle or plant there." It is contained in "Leaming and Spicer's Grants and Concessions," page 12, printed by virtue of an act of the legislature, in 1758, at Philadelphia, by W. Bradford, printer to the King's most excellent Majesty, for the Province of New Jersey.

Under these concessions, which were republican in their character, a government was commenced, and with some interruption, occasioned by the Dutch conquest and other causes, continued until the partition into East and West Jersey, by means of the Quintipartite deed in 1676. After this, the government of the two provinces was distinct, until the surrender to Queen Anne in 1702.

In 1682, Robert Barclay was appointed Governor for life by the proprietors of East Jersey, and executed the office by a deputy, who convened an assembly elected by the people. Counties were established, and a high sheriff appointed for each, and courts were organized. No other assembly appears to have sat until 1686. In 1688, it sat again. From 1692 to 1695 assemblies convened yearly, and afterwards at irregular intervals. Much doubt existed as to the legality of this proprietary government, and difficulty was experienced in carrying it on, much aggravated by disputes about Indian grants and the quitrents reserved by the proprietors. Proceedings were commenced in the court of king's bench in England, to deprive the proprietary officers of their places, by means of a writ of *quo warranto*, and this led to the surrender of the government to the crown, the proprietors retaining their exclusive right to dispose of the soil.

West Jersey was governed according to the provisions of "The concessions and agreements of the proprietors, freeholders, and inhabitants of the Province of West New Jersey in America," dated March 3, 1676, and signed by William Penn, and one hundred and forty-eight others, the original of which, beautifully engrossed on vellum in a well-bound quarto, is preserved in the land-office at Burlington.¹ Some of the governors were appointed by the proprietors, and others by the legislature; which latter body appears to have appointed all the other officers necessary to carry on the government. Difficulties, however, arose, and the proprietors joined with those of East Jersey, in the surrender.

¹ See *Leam. and Spic.* 382.

The laws enacted by these two governments do not appear to have been printed, until such of them as were extant were collected by Learning and Spicer. They were sent in manuscript to the counties and read at public assemblies of the people. The minutes of the county court of Cape May for 1694, contain this entry: "We, the grand jury, see cause to present George Taylor (he was the Clerk), for publishing a false copy of the act of Assembly, on a court day in December, 1693." He pleaded not guilty, and was tried. Some witnesses swore that he read the laws differently at two courts, and that when he first read them "they was not interlined." "Jeremiah Basse, President of the Court, asserteth them to be the same laws and written by the same hand; the rest of the Justices say it is like the same hand, and they believe it to be the same hand." The jury found him not guilty, and he was cleared by proclamation. None of these laws are now in force, although several of them, slightly modified, are still on the statute book as substantially reënacted after the surrender, and the influence of the correct principles contained in the Concessions still continues, and it is hoped will never be lost.

Upon the assumption of the government by the Queen of England, in 1702, a governor of the Province of "Nova Cæsaria or New Jersey," was appointed and commissioned under the great seal of Great Britain, to hold his office during the pleasure of the sovereign, and continued to be so appointed and commissioned until the Revolution. The commission and the instructions accompanying it, drawn with great care and ability by the law officers of the crown, contain the constitution under which the gov-

ernment of the province was administered, with but little variation, until the adoption of the new constitution in 1776. They, in fact, introduced the main features of the British Constitution, as improved by the Revolution of 1688, with a still larger infusion of the republican element, suited to a people already accustomed to self-government.

The executive power was confided to the governor with the advice of twelve counselors, appointed originally, and occasionally afterward, by the crown, but more commonly by the governor himself, six of whom were residents of East, and six of West Jersey, five constituting a quorum. The title adopted by the governors, with unimportant variations, was "Captain-General and Governor-in-chief, in and over the Province of Nova Cæsaria or New Jersey and territories thereon depending in America, Chancellor and Vice-Admiral in the same."

The legislative power was vested in the governor, the council, and a General Assembly. The Assembly was convened, adjourned, and dissolved at the pleasure of the governor and council, and elected by virtue of writs under the great seal of the colony; two by the inhabitants and householders of the town of Perth Amboy, and ten by the freeholders of East Jersey; two by the inhabitants and householders of the town of Burlington, and ten by the freeholders of West Jersey. The governor usually sat with the council, but no law could be passed without his assent, the style used being, "Be it enacted by the Governor, Council, and General Assembly." In 1709, they passed an act reciting that the present constitution granted by the Queen, was found inconvenient, and to remedy the same, enacting that after the dis-

solution of the present assembly, the representatives should be chosen by the majority of voices or votes of the freeholders of each county, having one hundred acres of land in his own right, or be worth fifty pounds current money ; and that the person elected should have one thousand acres of land in his own right, or be worth five hundred pounds in real and personal estate. Two were to be elected for Perth Amboy, and two for each of the then five counties of East Jersey ; two for each of the towns of Burlington and Salem, and two for each of the then four counties of West Jersey. This equality between the two ancient divisions was carefully adhered to. Hunterdon County was established in 1714, but continued to choose representatives in conjunction with Burlington until 1727, when it was authorized to choose two, and Salem town was deprived of its separate representation. Cumberland County was set off from Salem in 1747, but continued to elect representatives as before, until 1768, when two additional members were added from Morris County, two from Cumberland, and two from Sussex, this last county extending into both divisions.

In 1725 an act was passed requiring the sheriff and other officer to whom a writ of election was directed, to give public notice of the day and place of election ; and on that day, between the hours of ten and twelve, to proceed to the election, by reading his writ, and that he should not declare the choice upon the view (that is merely from a vote by holding up of hands), nor adjourn, without the consent of the candidates, but should, if a poll was required, proceed from day to day, and time to time, until all the electors then and there present be polled ; and he was required to

appoint a clerk who should set down the names of the electors and the persons they voted for. There was of course but one place of election in each county. This mode of election continued for some time after 1776. The poll, if one was required, generally closed the first day; but on some occasions was kept open a week, or longer. In 1789, in consequence of the rivalry between East and West Jersey, as to whether the seat of the general government should be temporarily at New York or Philadelphia, the polls were kept open, in some of the western counties, three or four weeks.

Voting by ballot does not appear to have been practiced until after the Revolution. It was introduced in some of the counties in 1779, but was soon discontinued during the war. In 1783 the election by ballot was restored in several counties; in 1790 it was required in others; and in 1797 in all the counties.

From the surrender until the Revolution, a period of seventy-four years, there were twenty-two assemblies, some of which continued but one year, others longer, and one from 1761 to 1769,—eight years. In 1768 an act was passed — of course with the concurrence of the governor—that a general assembly should be holden once in seven years at least; to which Allinson, in his edition of the laws published in 1776, just before the Declaration of Independence, appends a note, that “although this act never had the royal assent, it is here inserted, on the probability that so reasonable a law will be regarded.” The Assembly first elected after this act, was dissolved at the end of three years; and that convened in 1772, dissolved itself in 1776. The number and duration of the sit-

tings of the several assemblies were very diverse, there having been on some occasions five or six within one year; and on others there was an interval of two, and once of five years, without an assembly being convened.

All the provincial officers for the whole colony or a county, including even the clerks of the Assembly, were appointed directly by the crown, by writ of privy seal, or by the governor and council, and were commissioned in the name of the reigning king, under the great seal of the province, which was in the keeping of the governor. The instructions required him to take care that the officers be men of good life, and well affected to our government, of good estates and abilities, and not necessitous people, or much in debt.

For several years the proprietors in England had much influence in the appointment of the officers. In 1715, by an instrument under their hands and seals, they appointed James Smith clerk of the supreme court, and James Alexander surveyor-general; and a letter was directed to Governor Hunter, in the name of King George, requiring him to receive, assist, and countenance them in the execution of their offices. Occasionally, the officers appointed by the governor and council were superseded, by direct appointments from the crown.

The governor and council were empowered to erect, constitute, and establish such courts as they should think necessary, and to appoint and commission judges and all other necessary officers and magistrates, and were instructed not to displace any of the judges or other officers without good cause, to be signified to the crown, and not to express any limitation

of time in the commissions. According to the English Constitution, the King or Queen is considered the fountain of justice, and general conservator of the peace, and this branch of the royal prerogative was delegated, so far as the province was concerned, in a very ample manner, to the governor and council. By virtue of this power, they granted patents establishing and altering the boundaries of townships, constituting municipal and other corporations, and establishing and regulating ferries; and by ordinances, established courts of justice, defined their powers, appointed the times and places at which they should be held, and regulated the fees.

Lord Cornbury, the first governor, promulgated an ordinance in 1704; and as is remarked by Mr. Field in his interesting account of the provincial courts of New Jersey, "he is entitled to the credit of having laid the foundation of our whole judicial system, and laid it well." Justices were to have cognizance of cases to the value of forty shillings. In each county, there was established a court of common pleas, having power to try all actions at common law, and a court of general sessions of the peace, each with quarterly terms; and for the province, a supreme court, to sit once in each year at Perth Amboy and at Burlington, and to have cognizance of all pleas, civil, criminal, and mixed, as fully as the courts of queen's bench, common pleas, and exchequer in England. In 1714 the supreme court was required to hold two terms yearly in each place, and courts for the trial of issues were appointed to be held yearly in each county. The ordinance of Cornbury is in his own name, by the advice and consent of the council; and this example was followed by Governor Hunter. Afterwards

the ordinances are in the name of the king; but they all emanated from the same authority, namely, the governor and council. It does not appear that any of them were, like the commissions of the governor, by privy seal. The times and places of holding the courts, and the length of the terms, were from time to time altered, but the constitution and powers of the courts remained the same, except that in 1724, no doubt through the influence of the proprietors, the jurisdiction of the common pleas was restricted so as to except causes wherein the right or title of any lands, tenements, or hereditaments, were in any wise concerned. After 1751 the supreme court fixed the times of holding the circuits. The jurisdiction of these several courts remains to this day, as established by the ordinance of 1724. The legislature from that time endeavored to regulate the practice and fees, generally without success, their acts, except in reference to justices' courts, the jurisdiction of which was gradually enlarged, having been commonly disallowed by the king.

It was provided by the original instructions, that appeals might be made from the courts, to the governor and council, in all cases where the sum or value appealed from exceeded one hundred pounds, with an ultimate appeal to the king's privy council, where the sum or value appealed from exceeded two hundred pounds. The only material changes since made in the judicial system first established, have been the establishment of an orphans' court in each county, and the giving to the circuit courts in each county original jurisdiction in all cases at common law, including cases where the title to land is in question, and equity powers in mortgage cases.

A court of chancery was recognized as an essential part of the judiciary, from the first, although no separate tribunal for the exercise of equity powers appears to have been instituted, either in East or West Jersey. Lord Cornbury provided by ordinance, that the governor or lieutenant-governor for the time being, and any three of the council, should constitute a court of chancery, and hear and determine causes, according to the usage or custom of the high court of chancery in the kingdom of England. Afterwards Governor Hunter claimed a right to exercise the powers of chancellor alone, without the aid of his council, and this course was sanctioned by the king. In 1770 Governor Franklin, with the advice of his council, adopted an ordinance, by which, after reciting that there had always been a court of chancery in the province, and that the same required regulation, it was ordained, that his Excellency, William Franklin, be constituted and appointed 'chancellor, and empowered to appoint and commission such masters, clerks, examiners, registers, and other necessary officers as should be needful in holding the said court, and doing the business thereof; and also to make such rules for carrying on the business of the said court as from time to time should seem necessary. The constitution and powers of this court remain unaltered, except that the governor is no longer chancellor; the office of register has been abolished, and the appointment of a clerk conferred on the governor and senate. The rules of practice were first systematized, so that the business transacted therein became important, in 1818, during the chancellorship of Governor Williamson. No appeal was provided for, unless it was to the king in council, and no

one is known to have been otherwise demanded until in 1799, the legislature enacted, that an appeal might be taken to the court of errors and appeals.

The ecclesiastical jurisdiction was reserved to the Bishop of London, excepting only, "the collating to benefices, granting licenses for marriages, and the probate of wills," which were assigned to the governor. By virtue of this grant, he became the Ordinary and Metropolitan of the province, having all the powers in regard to the estates of deceased persons, which, in England, belonged to the courts of the bishop and archbishop. As judge, therefore, of the "Prerogative Court," which is the title of the archbishop's court, he had the sole and exclusive jurisdiction of matters relating to wills, to administrations, and to guardianships, with no superior but the king and his privy council.

It being very inconvenient, and indeed almost impossible, for the people in all parts of the province to resort to the governor, especially when he resided in New York, he appointed deputies, called surrogates, as was also the practice in England, to act for him. In 1720, Michael Kearney was commissioned, under the great seal, surrogate of the Province of New Jersey, with full power to swear the witnesses to last wills and testaments, and to admit administrations on the estates of persons dying intestate, and administer the oaths to executors and administrators, for the due execution of their offices, and their bonds in his name to take, to call to account and reckoning with executors and administrators, and their accounts to examine, approve, allow, and discharge, and quietus thereupon to give and grant, and the balance of said account to receive, for which he was to be accounta-

ble to him. Afterwards, one was appointed for each division, and as occasion required more, sometimes one for two or three counties, and sometimes more than one in the same county. They were of course removable at the pleasure of the governor, and were simply deputies, the probate of wills and other official acts being generally in his name and under his hand and official seal as ordinary. He retained the power of acting himself in the first instance, in all cases brought before him, in his court. The acts of his surrogates were recognized as valid by the courts, and they were considered lawful and competent judges of the matters submitted to their cognizance. When disputes arose, they were settled in the prerogative court.

The surrogate's commission, it will be perceived, required him to be accountable to the ordinary for the balance of an account in the hands of an administrator. This was to enable him to distribute it to the next of kin, pursuant to the English Statute of Distribution, enacted in the time of Charles II., not long before the surrender. Unless some dispute arose, it is supposed that the balance was commonly paid over by the administrator himself to those entitled.

In 1784, orphans' courts were established, and provision was made by law for one surrogate being appointed in each county, whose power was limited to the county. The original jurisdiction of the ordinary remained as before, until in 1820 it was restricted to the granting of probates of wills, letters of administration, letters of guardianship, and to the hearing and finally determining of disputes that may arise thereon. In these matters it is still concurrent with

that of the surrogates and orphans' courts ; and from all orders and decrees of the orphans' courts an appeal may be taken to the prerogative court. In 1822 the appointment of the surrogate was given to the joint meeting, and so remained until the new constitution provided for his election by a popular vote.

By the constitution of the supreme court, it was invested with plenary jurisdiction in criminal, as well as civil cases. Until several years after the Revolution, it was the practice to summon grand juries, by virtue of a writ for that purpose, directed to the sheriff of the county in which it sat, who inquired and made presentments, and passed on indictments for offenses committed in that county. Other criminal cases were brought there by the attorney-general, or on special leave by the defendant. Trials of criminal and civil cases, by a jury of the county in which the offense was alleged to have been committed, or the cause of action arose, were quite frequent, there being seldom a term without one or more.

Special commissions of oyer and terminer were issued for the trial of felonies in the different counties, when considered necessary, and regularly at the times of the yearly circuit courts. They were commonly directed to the justices of the supreme court, or two of them, and to the judges and justices of the county, empowering them, or any three of them, of whom a justice of the supreme court should be one, the jail of the place of sitting, of the prisoners therein being, to deliver, and at a day by them to be appointed, diligently to make inquiry upon the premises, and all and singular the said premises hear and determine, and the jail there deliver, and those things do and perform according to the law and custom of

the kingdom of England, and of the Province of New Jersey; and commanding the sheriff to bring before them the prisoners with their attachments; the commission to continue in force a certain specified time, sometimes a few days and sometimes several months. These commissions continued to be issued until the passage of the act of 1794.

Clerks of the courts were appointed by the governor, and commissioned to hold during pleasure. There were, besides, one or more clerks of the circuit, who attended the sittings in the counties, and kept their own minutes. A book containing such minutes of the oyer and terminer and circuit courts, held in most of the counties from 1749 to 1762, is preserved in the clerk's office of the County of Middlesex. The oyer and terminer, as well as the circuit, were regarded as branches of the supreme court, and the proceedings therein subject to its control. The clerks seem to have exercised the power of appointing deputies.

Benefit of clergy was prayed for and allowed, as in England. In one instance, the entry in the minutes of the oyer is, "the prisoners being asked if they had anything to say why sentence of death should not pass on them, according to the verdict found against them, prayed the benefit of the clergy; the court being of opinion that they were entitled to the benefit of their clergy, their judgment is that they be branded in the brawn of their left thumb with the letter T. immediately in the face of the court, which sentence was executed accordingly; and ordered that they be recommitted till their fees are paid, and they each enter into recognizance in one hundred pounds, to be of good behavior for one year."

The ordinance establishing the circuits, required the high sheriff, justices of the peace, the mayor and aldermen of any corporation within the counties, and all officers of any of the courts, to be attending on the chief justice and other justices going the circuit, at his coming into and leaving the several counties, and during his abode within the same ; and the practice, as it was in England until the introduction of railways, was for the sheriff, with as many justices and other gentlemen on horseback as he could conveniently collect, to await the arrival of the judge at the county line, to which he was in like manner escorted by the officers of the adjoining county, and escort him to his lodgings. At the opening and closing of the court, from day to day, the sheriff and constables with their staves of office, escorted him from and to his place of lodging to the court-house, as was indeed the usual custom until very recently.

When sitting in court, the justices of the supreme court wore a robe of office, and commonly a wig, although it is not probable, that like their brethren in England, they considered it necessary to carry four of these indispensable articles, namely, “ the brown scratch wig for the morning when not in court ; the powdered dress wig for dinner ; the tie wig with the black coif when sitting on the civil side of the court ; and the full-bottomed one for the criminal side.”

At May term, 1765, the supreme court promulgated the following rule : “ The court considering that it is the usage in England for counselors at law, during term time at Westminster, and on the circuits through the kingdom, constantly to appear in the court habited in robes or gowns adapted to the profession of the law, and as the introduction of the like usage

into this province may tend to advance the dignity, solemnity, and decorum of our courts, and have many other useful consequences: It is therefore ordained, that no person practicing as counsel at the bar (except those of the people called Quakers), shall for the future appear at any supreme court to be held in this province, or in any of the courts on the circuits, unless he be habited in the bar gown and band, commonly worn by barristers at Westminster, and on the circuits in England, under a penalty of a contempt of this rule." It continued to be observed until 1791, when the leading counselors presented a petition, setting forth that it was found to be troublesome and inconvenient, and deemed by them altogether useless, and it was rescinded.

In 1763, in the absence of Chief Justice Morris, the court, upon the ground that his majesty's subjects inhabiting within this province, who were possessed of entailed estates, labored under great disadvantages on account of the small number of persons empowered to pass fines or suffer recoveries, appointed Cortlandt Skinner and Richard Stockton, sergeants at law. But the next day, the chief justice being in attendance, Mr. Skinner, the attorney-general, expressing great doubts as to the regularity of the proceeding, announced that he was unwilling to practice as a sergeant under this appointment, whereupon the court took the matter into consideration, and being of opinion that sergeants could not be regularly made or appointed by rule of the court, but ought, on the recommendation of the judges, to be called up by writ out of chancery, and then sworn, agreeable to the practice in England, annulled what had been done.

Commissions of the peace were issued by the gov-

ernor and council, agreeably to the practice in England, whereby justices were appointed for the different counties, yearly or otherwise, as they chose ; a part of whom were designated as of the quorum, so that a court of sessions could not be held without the presence of one of them. These commissions appear to have generally included in each one, the members of the council, or some of them, the justices of the supreme court, and the attorney-general, so that they thus became conservators of the peace throughout the province. Judges of the pleas were commissioned, sometimes three or more together, and sometimes separately. The commissions used varied in their terms ; but it is believed that they in express terms declared that the office was to be held, "for and during our will and pleasure ;" or that they designated no particular tenure, thus leaving the office to be in fact held during the pleasure of the executive.

Justices of the supreme court appear at first to have been commissioned, agreeably to the original instructions, without any express limitations ; but they were by these instructions removable for cause, to be made known to the king. In some cases, the commission authorized the incumbent to execute his office, according to the laws, statutes, and customs of that part of our kingdom of Great Britain called England ; but no settled form was adhered to. Chief Justice Morris was commissioned during good behavior, as early as 1738. In 1748, Samuel Nevill was commissioned to hold during pleasure ; but the next year this commission was revoked, and he was commissioned to hold during good behavior, and this appears to have been afterwards the usual tenure, until

1776, when the convention adopted the very questionable term of seven years, still adhered to.

Sheriffs were commissioned in this wise, or in some similar form : "We commit unto you, our County of E., in the Province of New Jersey, to keep from the date of these presents, during our pleasure, yielding unto us and our successors, our dues and other things to us belonging, and we command all our loving subjects in our said county, that to you in the execution of the office of high sheriff of our said county they be aiding, helping and assisting." In 1747, an act of the legislature confirmed by the crown, provided that the sheriff and under-sheriff should not continue in office above three years, and should be incapable of holding office again, until they had been out of office three years, and that no sheriff should be appointed who was not a freeholder and resident of his county and who had not been such for the three preceding years. Coroners were also appointed by the governor and council.

An act was passed in 1714, to raise money for building and repairing jails and court-houses, which authorized the inhabitants of each town and precinct, to assemble on the second Tuesday of March yearly, and choose two freeholders for the ensuing year, which said freeholders, together with all the justices of the peace of each county, or any three of them, one whereof being of the quorum, should meet together, and appoint assessors and collectors, to assess the inhabitants, and collect the taxes. In case any town or precinct should neglect to elect freeholders, the justices were authorized to appoint them. The board thus constituted continued to have the care of the county business, until the act of 1798 incorporated the freeholders alone.

Some of the townships, as has been stated, were established by patents under the great seal, which authorized the inhabitants to choose overseers of the highways, constables, overseers of the poor, an assessor, and a collector. In 1717 the inhabitants of all the townships were required to elect, annually, assessors and collectors of the taxes, and in case of neglect, any three justices, one being of the quorum, were authorized to appoint them. Constables, except in the patent townships, were appointed yearly, by the courts of general sessions of the several counties, as they deemed necessary: one or more for each township or town, or precinct without definite bounds. This was a common law power, held to belong to this court in England and in New Jersey, in all necessary cases, to prevent a failure of justice.

A "Register and Calendar," printed at Philadelphia, for 1774, which contains a list of the British parliament and ministry, and of the officers of each of the American colonies, states the officers of the Province of New Jersey to be as follows: —

Governor, his Excellency, William Franklin, Esq.

Lieutenant-governor, his Excellency, Thomas Pow-nall, Esq.

His Majesty's Council, twelve gentlemen, named.

Secretary, Maurice Morgan, Esq.; deputy, Charles Petit, Esq.

NOTE. — The council in their legislative capacity is a distinct branch of the legislature, in the nature of the House of Lords in Great Britain.

Representatives in General Assembly, thirty gentlemen, who are named.

Treasurer for East Jersey. Stephen Skinner, Esq.

Treasurer for West Jersey, Samuel Smith, Esq.

Surveyor-general for East Jersey, the E. of Sterling.

Surveyor-general for West Jersey, Daniel Smith, Esq.

Agent in Great Britain, Benjamin Franklin, Esq.

Attorney-general, Cortlandt Skinner, Esq.

COURT OF CHANCERY.—Chancellor, his Excellency, the Governor.

Masters, James Hude, James Bowman, Joseph Reed, Esqrs.

Registers, Josiah F. Davenport and John Smyth, Esqrs.

Clerks, Josiah F. Davenport, Jonathan Deare, Joseph Warrell, John Antill, Daniel Ellis, Robert Ogden, Esqrs.

Examiners, J. Smyth, D. Ellis, Robert Stockton, Esqrs.

SUPREME COURT.—Judges, Hon. Frederick Smyth, chief justice; Hon. Charles Read and Hon. David Ogden, Esqrs.

Clerk¹ Maurice Morgan, Esq.; deputy, Charles Petit, Esq.

NOTE.—This is a court of king's bench, common pleas, and exchequer. The four annual terms begin on the second Tuesdays in May and November, at Burlington, and the first Tuesdays in April and September, at Perth Amboy.

¹ Maurice Morgan does not appear to have been chief cook of the ever to have been in New Jersey. He Duke of Newcastle.

CHAPTER II.

THE STATE CONSTITUTION ADOPTED IN 1776, AND THE GOVERNMENT UNDER IT.

A LARGE majority of the people of New Jersey were resolute in their opposition to the tyrannical measures of the British government, and determined to resist, if needful, by a resort to arms. Governor Franklin and most of the councilors, who held their appointments under him, were determined to adhere to the royal cause. But most of the members of Assembly, who had been elected in 1772, sympathized with the people they represented.

Early in 1774, the Assembly, following the lead of Virginia, adopted a resolution for the appointment of a Standing Committee of Correspondence, and requested the Assembly of the other colonies to follow their example, and this they did. Massachusetts proposed that a general Congress should meet at Philadelphia in September. Governor Franklin was requested to convene a meeting of the legislature for the purpose of appointing delegates to this Congress; but he refused to do so. In consequence of this refusal, a meeting of the people of Essex County was held at Newark, in June, which directed a circular letter to be sent to the several counties, requesting delegates to be chosen, to meet a general committee at New Brunswick on the ensuing twenty-first day of July. This request was complied with, so that a

committee (as they styled themselves), composed of seventy-two delegates, convened at the appointed time and place, which passed resolutions condemnatory of the proceedings of parliament, and chose five delegates to represent this colony in the proposed general Congress; but they did not assume any of the powers of a legislative body.

The General Congress met at Philadelphia in September, as proposed, and after adopting various resolutions and addresses, resolved that another Congress should be held on the tenth of May, and that all the colonies in North America, should choose deputies to attend the same. The Legislature of New Jersey met at Perth Amboy in January, 1775, and passed a few laws. The governor in his message strongly condemned the meeting of a general Congress; but the Assembly, as the minutes say, by a unanimous vote, appointed five delegates, who attended the Congress, held in May, 1775.

A committee of correspondence, appointed by a convention held in New Brunswick on the second day of May, appointed a general convention to be held at Trenton on the twenty-third of the same month; and meetings were held in the several counties, which chose one or more delegates,—in one county as many as fifteen,—who met at the appointed time and place, under the name of a “Provincial Congress,” and proceeded to aid the Revolution, now fairly commenced, by assuming powers of government.

This Congress adopted the form of an association, which was directed to be sent to the committees of correspondence in the several counties, to be signed by the inhabitants. It pledged every person signing it, under the sacred ties of virtue, honor, and love of

country, personally and as far as their influence extended, to endeavor to support and to carry into execution, whatever measures might be recommended by the Continental and Provincial Congresses. Only persons signing this association were allowed afterwards to vote for delegates to the Congress of the Province.

A committee of safety was appointed, to act during the recess of Congress; and such committees were afterwards continued, and met from time to time until a regular government was organized. They in fact exercised powers similar to those assumed by the bodies of representatives that met under the name of Provincial Congresses; deriving their force from the active support of a large majority of the people.

By the existing laws, elections for members of the Assembly were held by the sheriffs under the authority of writs issued by the governor and council. As these officers were appointed by and held their offices during the pleasure of the governor, it became necessary to provide a different mode of procedure. On the twelfth of August, 1775, the Provincial Congress adopted an ordinance, that the inhabitants in each county, qualified to vote for representatives of General Assembly (who were persons worth fifty pounds in real and personal estate), should meet at the respective court-houses, on the twenty-first day of September then next, and by plurality of votes, elect any number, not exceeding five, with full power to represent each county in a Provincial Congress to be held at Trenton, on the third day of October then next. The chairman of the meeting chosen by the voters present, and any five or more freeholders, were required to sign certificates of the election. It was

also resolved, that a committee of observation and correspondence be elected in each county, with full power as well to superintend and direct the necessary business of the county, as to carry into execution the resolutions and orders of the Continental and Provincial Congresses; and the inhabitants of each township were directed to choose a sufficient numbers of freeholders, in March, yearly, to aid the county committee. By these means the government was to a great extent taken out of the hands of the officers holding under the king; and by the coöperation of most of the people, the committees thus chosen, arrested and imprisoned persons believed to be disaffected to measures of resistance, or as they soon were called, the Tories; and they became, in most parts of the colony, the governing power.

The ordinance of August was carried into effect; delegates from each county were elected, and the Provincial Congress met at the time and place appointed. This body enacted ordinances (so-called, it would seem, to distinguish them from regular laws) for organizing a military force, and for raising money by taxation, and these ordinances were submitted to and carried into effect by the people as of binding obligation. The regular legislature met in November, 1775, for the last time, and enacted two or three laws; but made no attempt to interfere with the proceedings of the Congress. There were thus two distinct bodies, claiming and exercising legislative powers, and several members of the one were at the same time members of the other. The regular legislature was prorogued by the governor, until the third day of January; but they failed to meet on that day

Franklin then summoned them, by a proclamation in the name of the king, to meet on the ensuing twentieth day of June. But the Provincial Congress on the fourth day of June, by a vote of thirty-eight ayes to eleven noes, resolved that the proclamation ought not to be obeyed. On the sixteenth of June they ordered the arrest of the governor, and he was taken into custody and afterwards sent as a prisoner into Connecticut, by order of the Continental Congress, where he remained a prisoner until regularly exchanged. However hard this proceeding may seem, it was a necessary severity, justified by the special emergency ; and the effect was to put an end to the royal government, as was designed.

The only persons entitled by law to vote for members of Assembly, were freeholders, and only such voted for the delegates to the Provincial Congress. But as there were now many able-bodied inhabitants who were not freeholders, and whose services in aid of warlike measures were needful, this restriction was much complained of, so that after much discussion, it was resolved, on the sixteenth day of February, 1776, by a vote of nine counties in the affirmative, and four in the negative, that every person of full age, who had resided one whole year in any county immediately preceding the election, and was worth at least fifty pounds (one hundred and thirty-three dollars), in real *or* personal estate, should be admitted to vote. Subsequently, a regular ordinance was passed embracing this provision, and requiring all voters and office-holders to be persons who had signed the prescribed articles of association. This ordinance required the elections to be held at the court-houses of each county, on the fourth Monday in May then

next, and in subsequent years, to elect not more than five, and not less than three substantial freeholders, worth five hundred pounds (the value then of a good farm). It prescribed the manner of advertising the election, the officers who should hold it, and how it should be conducted and the result certified.

According to the mode of proceeding thus specified — which, except as to the presiding officer, was substantially the same as had long been practiced, — at the time of commencing the election, usually ten o'clock in the morning, the voters of the county who had assembled, chose a presiding officer. Unless a poll was demanded by a candidate; he took the sense of the meeting by naming the candidates, and requiring the voters to hold up their hands. If a poll was demanded, as was usually the case if there were more candidates named than the number to be elected, then each candidate who chose to do so, nominated an inspector and a clerk, and the voters severally named the persons they voted for, and the clerks wrote down their names and recorded each one's vote. Generally the election closed the same day it was commenced; but if a majority of the candidates required its adjournment, the election might be adjourned to another day or another place. As many of the voters were obliged to ride on horseback, that being the only mode of travel then in use, in many cases nearly or quite a day's journey, it of course often happened that a large number of the voters were prevented from attending. This mode of voting prevailed until 1790, when a law was passed authorizing in some of the counties voting in the townships of each county, and with written or printed ballots; and in 1797 this law was extended to all the

counties. The change from a county to a township place of voting was undoubtedly a great improvement, and it becomes each day more and more evident, that the election precincts require to be made still smaller. But it may well be doubted, I think, whether the boasted privilege of voting by ballot, is not rather a mistake than a privilege ; and whether it will not be well to return to an open *viva voce* vote, so that each voter's choice may be distinctly recorded. The frauds that are now so frequently perpetrated, would thus be made more easy of detection. The purpose relied upon by the advocates of a ballot, of thereby enabling the voter to avoid the danger of being subjected to the dictation of an employer or landlord, amounts practically to nothing. The case of a secret vote, unknown to the bystanders, is a rare exception to the general rule; and it is more than probable, that the practice of an open vote known to all, would tend to increase the independence and self-respect of the voter, and thus diminish the danger of his being influenced to vote otherwise than in accordance with his own convictions.

The Provincial Congress elected in May, 1776, in accordance with the ordinance of the previous Congress, convened at Burlington on the eleventh day of June, and an equal number of delegates being returned from each county, they voted separately. Agreeably to the recommendations of the Continental Congress, they adopted a provisional form of government for the colony. On the twenty-first day of June it was resolved, by a vote of fifty-four affirmatives to three negatives, "that a government be formed for regulating the internal police of this colony, pursuant to the recommendations of the Conti-

nental Congress of the fifteenth of May last." At the same time five delegates were chosen to represent them in the General Congress, and they were empowered to join in declaring the United Colonies independent of Great Britain, and to enter into a confederacy for union and common defense; "always observing that whatever plan of confederacy they entered into, the regulating the internal police of this province was to be reserved to the colony legislature."

A committee of ten members, of which Rev. Jacob Green, a Presbyterian minister, who was a delegate from the County of Morris, was the chairman, was appointed to prepare the draft of a constitution, on the twenty-fourth of June. Two days afterwards, the committee accordingly reported. Who was the author of the draft does not appear. It has always been understood that the Rev. Dr. John Witherspoon, President of Princeton College, took an active part in preparing it. He was a delegate to the Provincial Congress; but having been appointed by that body a delegate to the Continental Congress, his name does not appear on the committee, nor did he afterwards vote on the question of adopting the Constitution. Two eminent lawyers, Jonathan Dickinson Serjeant, and John Cleves Symmes, were on the committee; but the instrument bears quite as prominent marks of a clerical as of a legal origin.

The draft as reported, was referred to a committee of the whole, and considered during the ensuing three days, but does not appear to have been printed. On Saturday the twenty-eighth, it was resolved that Congress would receive the report of the committee of the whole on the next Tuesday, at

which time every member was enjoined to be punctual in attendance. On Tuesday, July second, Congress resumed the consideration of the report of the committee of the whole, which (as the minutes state), after sundry amendments, was agreed to. Then “on the question whether the draft of the constitution, formed on the report of the committee of the whole, be now confirmed, or be deferred for further consideration?” it was carried to confirm “now.” The names of twenty-six members are recorded as voting for “now,” and nine “for deferring.”

On the next day, the minutes state, that “on the question whether the draft of the constitution be now printed, or the printing be deferred for a few days, in order to consider in a full house the propriety of the last clause containing the proviso respecting reconciliation?” seventeen voted for printing “now” and eight “for deferring;” less than the regular quorum, but it had shortly before been resolved, that twenty should be a quorum for any business, except for the formation of the constitution. One thousand copies were ordered to be printed and circulated. No attempt was made to submit the adoption of the instrument to a direct vote of the people. Under the circumstances, it was probably wise to omit doing so. It undoubtedly met the wishes, and received the hearty assent of all the inhabitants in favor of an independent government, and it was not intended to harbor those who did not belong to this party. It was expected to be only temporary, but it continued to be acted under, and to provide the essentials of a good local government for sixty-eight years. It was indeed so popular, that it was only

after several attempts that its defects could be partially remedied, by the substitution of that now in force. The Congress also resolved, "That in order to prevent a failure of justice, all judges, justices of the peace, sheriffs, coroners, and other inferior officers of the late government within this colony, proceed in the execution of their several offices, under the authority of the people, until the intended legislature, and the several officers of the new government be settled and perfected; having respect to the present Constitution of New Jersey as by the Congress of late ordained, and the order of the Continental and Provincial Congresses; and that all actions, suits, and processes, be continued, altering only the style and forms thereof, according to the terms by the said Constitution prescribed, in the further prosecution thereof."

Independence was declared by the Continental Congress at Philadelphia, two days after the adoption of the New Jersey Constitution. On the eighteenth day of July the Provincial Congress resolved that, "Whereas the Honorable Continental Congress have declared the United Colonies independent States, we, the delegates of New Jersey in Provincial Congress assembled, do resolve and declare, that we will support the freedom and independence of the said States, with our lives and fortunes, and the whole force of New Jersey." The next day it was resolved, that this House from henceforth, instead of the style and title of "The Provincial Congress of New Jersey," do adopt and assume the style and title of "The Convention of the State of New Jersey." This resolution seems to have been deemed equivalent to a virtual substitution of the title "State," instead of "Col-

ony," as used in the constitution. The governor and the legislature, acting under its provisions, assumed the name, "State of New Jersey," and indictments were framed in the same way. Subsequently a law was passed directing that all commissions and writs, which by the constitution were required to run in the name of the Colony, run in the name of the State of New Jersey, and all indictments should conclude against the peace of this State, the government and dignity of the same; and that all commissions, writs, indictments, before issued, preferred, and exhibited, which had the word State, and not the word Colony, should be and were declared to be, good and effectual in law.

The Constitution thus hastily prepared and promulgated, made as little change in the form of the government prescribed, as was consistent with the changed circumstances. The council, consisting of one from each county, and three members of Assembly, which number it was expressly declared might be added to or diminished by the legislature, were directed to be elected, that year on the second Tuesday of August, and afterwards on the second Tuesday of October, yearly;—and the legislature so elected was to meet on the second Tuesday after the day of election, that is to say, in a fortnight after the election took place. The right of voting was left as it had been previously settled, to wit: all the inhabitants of the colony, of full age, worth fifty pounds clear estate in the same, and who had resided within the county, in which they claimed a vote, for twelve months immediately preceding the election. Members of the Council were required to be worth one thousand pounds, and members of Assembly five hundred pounds each.

In regard to this provision regulating the right of voting, it is important to notice that the same Congress which adopted the constitution, on the fifteenth day of July, enacted an ordinance, which prescribed the places of holding the elections in August, how they should be conducted, and the place for the meeting of the legislature ; and which contains this important proviso: "That no person or persons shall be entitled to a seat in council or Assembly, unless he or they so elected, shall have first taken the following oath or affirmation, to wit, I, A. B., do swear (or affirm) that I do not hold myself bound to bear allegiance to George the Third, King of Great Britain ; that I will not by any means, directly or indirectly, oppose the measures adopted by this colony or the Continental Congress against the tyranny attempted to be established over these colonies by the court of Great Britain, and that I do and will bear true allegiance to the government established in this colony under the authority of the people ; and as it is highly reasonable, that the enemies of America should not be admitted to take an active part in our public measures, no person or persons shall be admitted to vote at the said election, unless he first take the same oath or affirmation, if thereunto required, by any one of the judges or inspectors of the said election, which oath or affirmation any one of the judges aforesaid shall be empowered to tender and administer to any or either of the said electors." And it may be noticed also that although females, who were worth one hundred and thirty-three dollars in their own right, were nominally embraced within the words of the constitution, this ordinance refers only to males, the word, being "unless he take the same oath."

The governor, and all the other state, as well as many of the county officers, were directed to be chosen by the Legislature in joint meeting: the governor yearly; the judges of the supreme court for seven years; judges of the pleas, justices of the peace, clerks of the supreme court and common pleas, and the provincial secretary and attorney general for five years each. Sheriffs and coroners by the people of the counties yearly, to hold however only three years successively. Township officers to be elected at annual town meetings. The governor was to be president of the council, having no veto and only a casting vote; in his absence, the vice president of the council to exercise his powers. He was, as the governor of the colony had always been, constituted the chancellor and captain-general and commander-in-chief of the military force and ordinary or surrogate general. Any three or more of the councilors were constituted a privy council to advise him; and the governor and council, seven whereof were a quorum, were to be the court of appeals, and to possess the power of pardoning criminals, after condemnation. No law could be passed, unless there should be a majority of all the representatives of each body personally present and agreeing thereto.

The establishment of any religion was prohibited; and provision made that no Protestant inhabitant of the colony should be denied the enjoyment of any civil right, and that all persons of the Protestant religion should be capable of being a member of either branch of the legislature, and of holding office.

All the laws contained in Allison's edition of the laws, which had then just been compiled and published by authority of the legislature, and which

contained the titles of all the private acts and all the public acts supposed to be in force, were declared to be in force, excepting such only as were incompatible with the constitution; and the common law of England, as well as so much of the statute law, as had been before practiced in the colony were to remain in force, until altered by a future law of the legislature. The inestimable right of trial by jury was to remain confirmed as a part of the law of the colony without repeal forever.

Every member of the council and Assembly was required to swear or affirm, that he would not assent to any law, vote, or proceeding, which should appear to him injurious to the public welfare, nor that should annul or repeal that part of the third section in the Charter, which establishes an annual election of members of council and Assembly, or that part respecting the trial by jury, or that should annul, repeal, or alter any part of the eighteenth and nineteenth sections of the same; these last being the sections in regard to religion.

The concluding clause, so much objected to by some of the more ardent members of the Congress, was as follows: "It is the true intent and meaning of this Congress, that if a reconciliation between Great Britain and these Colonies should take place, and the latter be again taken under the protection and government of the Crown of Great Britain, this Charter shall be null and void, otherwise to remain in force."

It is declared by the first article of this constitution, "that the government of this province shall be vested in a governor, legislative council, and General Assembly." There is no reason to doubt, from

the fact that the members of the legislature are required to swear or affirm that they would not assent to any law altering certain parts of it, that it was then supposed, the government they constituted would be supreme in the sense declared by Blackstone in his *Commentaries*, then the text-book of the lawyers and judges, and might alter the constitution if not restrained. The principle now so well established, that a law not in accordance with the constitution is null and void, and must be so held by the courts, whenever the question is brought before them, had not then been recognized.¹

In pursuance of this constitution, and of the ordinance to carry it into effect, elections were held in all the counties, and the new legislature met in Princeton on the twenty-seventh day of August, 1776, and continued in session until the ensuing eighth day of October. On the thirty-first day of August, William Livingston was chosen by the joint meeting of the two Houses, governor, and subsequently the other officers. The State of New Jersey thus became an independent sovereign State, not in the absolute sense sometimes insisted upon, but substantially and relatively. The inhabitants declared themselves free from their previous allegiance to the king of Great Britain, and independent of him and of the parliament; but they were not independent of the other States, who were unitedly engaged in waging a war, to the hazard, as all knew and acknowledged, of their

¹ This question was agitated in the case of *The State v. Parkhurst*, decided in 1804, in which Chief Justice Kirkpatrick delivered an able opinion, affirming the duty of the court to declare a law void which was in conflict with the constitution. 4 Hals. Rep. 442.

And although the doctrine was at first disputed, it was not long before it became an acknowledged principle, that no legislature can enact a valid law in conflict with the Constitution of the State, or of the United States.

fortunes and lives. The independence declared by the Continental Congress, and recognized by the Congress of New Jersey, was, that the United Colonies were, and of right ought to be, free and independent States.

The people of New Jersey and their government ceased to be a colony, and subject to the control of a foreign power, and assumed the most important rights and duties of sovereignty. They possessed and exercised the power of punishing as traitors all persons who resisted their authority. But from the beginning, they owed and acknowledged allegiance to the Continental Congress. As has been seen, the constitution adopted, was designed "for regulating the internal police of this colony." The delegates to the Continental Congress were empowered to join in entering into a confederacy for union and common defense, reserving only the regulating of the internal police of the province to its legislature. Before and after this confederacy was formed, and until the adoption of the Constitution of the United States in 1789, the individual inhabitants were not directly amenable to any laws of the Congress, which had no judiciary and no executive to declare or enforce such laws; but they were willing subjects of the higher power of waging war intrusted to it. No citizen owed allegiance to the government of the United States, in the strictly legal and technical sense of being tried and punished as a traitor; and on account of this material defect in the confederacy, the laws of the several States provided for the judicial punishment of offenders against the laws of Congress. But had the authorities of any of the States undertaken to array the power of that State against the Continental Con-

gress, while the conflict with Great Britain was going on, the military force at the command of Congress would of necessity have been turned against the forces of the State, and the persons adhering to it would have been treated as rebels. Governor Franklin was not subjected to any judicial action ; he had violated no law ; but he was treated as a prisoner of war ; and had he been placed in the same situation a century or two earlier would probably have lost his head.

The colony of New Jersey, as well as other colonies, always exercised some sovereign powers ; but they were subject to the supreme sovereignty of Great Britain, and the proper limits of this sovereignty was the subject of constant dispute, and at length produced a war, which made them independent. From 1776 to 1789, as has been already remarked, some powers of superior sovereignty, imperfectly defined, but real, were acknowledged to exist in the Continental Congress, wanting, as that body did, most of the attributes of a government. When the Constitution of the United States, under which it is our happiness now to live, was adopted, a government was established with full powers, and every individual inhabitant of the States was made personally subject to its rule. They became liable to punishment by means of a judicial proceeding, and it was declared to be treason, to levy war against that government. The several States were still left to be sovereign States, and as such may still punish treason against their separate governments. But over the subjects exclusively confided to the rule of the general government, embracing among them many of what may be called the higher attributes

of sovereignty, the sovereignty of the State is abolished. The sovereignty of this general government extends only to such objects as are in terms, or by necessary implication, expressed ; but over these objects its right to command is absolute, and subject to no control but that provided in the Constitution itself. Every citizen has thus become plainly subject to two distinct sovereignties, acting upon him individually, in respect to different objects, and he therefore owes allegiance to them both ; that is to say, he is bound to obey their laws.

It cannot be doubted, however, that many intelligent politicians have believed, and I suppose yet believe, that a paramount allegiance is still due to the individual sovereign States, and that these States may discharge their allegiance to the Union by an act of formal secession. This opinion has evidently been founded on the notion that sovereignty, or the right of command, is of necessity one and indivisible. This was the teaching of the ancient Greek authors, and especially of Aristotle ; and as these authors had no conception of a government restrained by express limitations of its power, and had no proper conception of a divine superintending Ruler of Nations, such a notion is not to be considered wonderful. But the wonder is that such views should be thought applicable to circumstances so radically different. It is a signal instance of the long abiding influence of wrong principles, when once adopted, as undisputed axioms. No State was ever sovereign in any such sense. Now, under the constitution, it is simply a question of interpretation. As was clearly discerned and stated by De Tocqueville in his " Democracy in America," our united government " rests upon a wholly novel the-

ory, which may be considered a great discovery in modern political science." It would seem impossible for language to make it plainer than that used in the remarkable instrument. It is not only declared that the constitution, and laws made in pursuance of it, shall be the supreme law of the land, but that the judges in every State shall be bound thereby, anything in the constitution and laws of any State to the contrary notwithstanding; and that all the executive and judicial officers and members of the legislature of each State, shall be bound by oath or affirmation to support this Constitution. A supreme power is necessarily the judge of the duty of the inferior to obey, otherwise it could not be supreme. And to guard the citizens against any unconstitutional use of such a power, a supreme judiciary was provided, as independent of all undue influence as circumstances permitted, whose authority was made to embrace all cases in law or equity, arising under the Constitution or laws of the United States.

That these provisions constitute the government of the United States the ultimate judge of all questions arising between it and the governments of the separate States, is too plain to admit of dispute; and so far as this question is concerned, it is immaterial whether we regard the Union as properly a Federal Union, or as something entirely different. It is in truth a very complex Union, without any previous example in the history of the world: in some of its aspects a federation of sovereign States, in others a government over all the citizens. Some of the more candid advocates of secession admit the paramount power of the general government over the governments of the States, and deny the power of a

State, while remaining in the Union, to nullify the laws of the general government. But they insist that there is still an ultimate sovereignty in the people of each State, which is so supreme and incapable of limit, that they have the reserved right to withdraw from the Union at their pleasure, responsible to no other power than to the Supreme Ruler of the Universe, for the reasons they may deem sufficient to justify such a course.¹

If this was put forward merely as a statement that for sufficient reasons, a people may be morally justified in revolting against the established government, as our forefathers did when they cast off the government of Great Britain, it need not be objected to. Even a part of any State may be justified in doing this. The right, if such it may be called, is the right of self-defense, and paramount to all laws and constitutions. It is therefore no legal or constitutional right. It can never be exercised against the consent of the existing government, unless those endeavoring to exercise it have sufficient force to displace that government, and to deprive it of its power. The individual actors in such cases understand that they go into the conflict in full view of the halter, and of all the other consequences of treason. It is a part of the divine government of the world, apparently necessary to prevent constant anarchy and confusion, that it is usually a hard thing to make a successful revolution. The theoretical line of distinction between secession

¹ This is the ground assumed by Alexander H. Stephens, in his elaborate work, *A Constitutional View of the late War between the States*. (See vol. ii. p. 22.) He claims that his doctrine is that taught by all writers, ancient and modern; but he cites none.

The right of an oppressed people to revolt, is taught and is set forth in the Declaration of Independence; but that State sovereignty is so indivisible in its very nature, that it cannot even bind itself to a paramount power, is not taught by any writer of repute.

and revolt may seem very thin ; but the difference practically is very great. Men will readily enter into measures considered legal and constitutional, who will start back with horror from embarking in a treasonable revolt.

The defects of the State Constitution of 1776, were mostly on the popular side, and except the most palpable error of failing properly to separate the legislative, executive, and judicial powers, so essential to every good government, they have, in my opinion, been very imperfectly remedied, by that adopted in 1844. Instead of a tenure during good behavior, so important to secure an independent judiciary, the judges are still appointed for the limited term of seven years, and the office is thus made the coveted prize of party conflicts ; and the highest court is still encumbered with uneducated judges. But a still more important defect is that the governor has no effective veto. A bill which has been passed by corrupt means, will be pretty sure to become a law, in spite of the governor's objections, as has been more than once made evident. If anything can be said to be fully established by the experience of over a century, it is that in a democratic government, the legislative power is most to be feared, and most needs control. Our present constitution has interposed several important checks to improvident legislation, that were wanting in that first adopted ; but there is no reason to doubt, that sooner or later the people will demand and provide stronger restraints.

Most of the laws enacted during the existence of the war were of a temporary character, relating to the organization of the militia, the laying and collecting of taxes, the issue and redemption of paper

money, providing for its being a legal tender; continuing the courts, the sitting of which was often interrupted, the definition and punishment of treason, and the forfeiture of the estates of persons guilty of that crime. An act was passed at the first session of the legislature, declaring that the several courts of law and equity of the State should be confirmed and established, and continued to be held with like powers, at the same time and places, as they were held before and after the Declaration of Independence. And afterwards, to prevent all doubts on the subject, it was enacted that all the private acts (only the titles of which were contained in Allison's edition) before passed into laws by the legislature, except such as had become obsolete, or had been disallowed by the king in council, or had been repealed, or had expired, should remain in full force.

Before and after the adoption of the Articles of Confederation, and prior to the ratification of the Constitution of the United States in 1789, a considerable part of the state legislation grew out of the circumstance that the State had become a sovereign power, and, so far as laws obligatory on individual citizens were concerned, independent of other government. Some of these laws provide for punishing offenses against the confederacy, by counterfeiting or refusing to receive its paper money, and made that money a legal tender. By a law passed by the State Legislature in 1778, "the United States of America," were declared to be a body politic and corporate, in New Jersey, and capable of suing in that name for debts due to them. Attempts were made, in conjunction with some of the other States, to regulate the prices of labor, and of many articles of merchandise,

and especially of provisions ; but these like the Legal Tender Act, proved worse than useless, and were soon abandoned.

Provision was made by the state laws for imposing duties on imports, and for enforcing those imposed by the Continental Congress, and for establishing custom-houses and naval officers. An act passed October 5, 1776, authorized the governor and council, by ordinance and commission, to establish a court of admiralty, and custom-houses, with the necessary officers, which was limited to one year, and in 1778 was continued, and supplied with a new act. No record of the ordinances or commissions are now to be found ; but it appears by numerous advertisements in Collins' "New Jersey Gazette," that in 1778 and 1779 a court of admiralty existed, of which Joseph Lawrence was judge, and afterwards J. Imlay ; and Joseph Bloomfield was register. The court is advertised to sit, sometimes in Allentown, sometimes in Trenton, and in other places, to determine the cases of certain vessels named, which were taken from the enemy as prizes, and sales are advertised by John Stokes, marshal.

It appears by the case of Jennings *v.* Carson, in the supreme court of the United States, reported 4 Cranch, 2, that the sloop *George*, and her cargo, captured in the year 1778, by a privateer, was libeled and condemned by the court of admiralty of New Jersey, in October, 1778, from which sentence there was an appeal to the Continental court of appeals, established by Congress, where the sentence of condemnation was reversed in December, 1780, and restitution ordered. The vessel had been sold by the marshal of the state court for paper money, but it

did not appear what had become of the money ; and the object of this suit was to render the owner of the privateer liable for it, which, however, did not succeed.

In 1782 a very carefully prepared act of the legislature was passed, regulating the proceedings in admiralty, and the fees ; and requiring the judge and other officers to be appointed by the joint meeting for three years. In cases of prize, capture, recapture, and seizure upon the water, an appeal was allowed to such judges as Congress had appointed, or might appoint to hear appeals. One of the sections provides for a trial before a court of oyer and terminer, to be held by virtue of a special commission before any two justices of the supreme court and the judge of admiralty, according to the course of the common law, of all traitors, pirates, felons, and criminals, who shall offend upon the sea, or within the admiralty jurisdiction. Whether any such court was ever held, I have not been able to ascertain. The joint meeting appointed John H. Imlay, judge of the admiralty, and Joseph Bloomfield, register, and at the end of three years they were reappointed. Captures as prize were very infrequent after 1782, and the business of the court was probably not important. The papers and records of the court have not been preserved. After the ratification of the Constitution of the United States, which vested the admiralty jurisdiction exclusively in the courts of the United States, the state laws were repealed.

After the peace, the people, who were greatly impoverished, were clamorous for stay laws, as has been commonly the case in all similar circumstances ; and much hostility was shown to the courts, and especially to lawyers, who had to bear the odium of endeavoring

to enforce the payment of debts and fulfillment of contracts. The prevailing feeling was very much like that which existed in 1769, described in Judge Field's "Provincial Courts," p. 165. Happily it did not assume the shape of an open rebellion, as it did in Massachusetts; but it was very marked in many of the proceedings of the legislature. The popular party had the ascendancy, and defeated every attempt to adopt a new constitution, or to amend that in existence.

Abraham Clark of Elizabethtown, a surveyor by occupation, and a strong-minded man, whose intentions appear to have been good, but whose prejudices were very strong, was the leader of this party. He was several times a delegate to the Continental Congress, and was one of the signers of the Declaration of Independence. Being a member of the legislature of 1784, he was the main advocate, and had the reputation of being the author of a law which passed without serious opposition, entitled "An Act for Regulating and Shortening the Proceedings of the Courts of Law." It was known afterwards as Clark's law, and the spirit which produced it was shown by his declaration: "If it succeeds, it will tear off the ruffles from the lawyers' wrists."

But it did not succeed. Governor Livingston describes it as prolonging, rather than shortening lawsuits. It had some good provisions, afterwards adopted with the necessary modifications; but like all such attempts at reform, made by incompetent persons, the innovations attempted were too great, and rendered it incongruous to other provisions of the law. It was soon altered, and after a few years entirely superseded by the practice act of Governor Paterson, still the basis of our system.

An anecdote of Clark was told me by Judge Rossel as having been received by him from Clark himself, which is perhaps worth preserving: "In the month of March, 1788, he was a member of the Congress from New Jersey, and boarded with a widow lady in New York, where Congress then sat, who lived in a very plain way. Sometime after dark, he was sitting in her little parlor, at a stand with a single tallow candle, which was all the light in the room, when there was a loud knocking at the front door. It soon appeared that the French Minister had called in his carriage to pay his respects to the member of Congress. Mr. Clark met him at the door, and as he advanced into the room, retired backwards toward the stand where he had been sitting. He then attempted to sit down in the chair he had left, but which the landlady, unperceived by him, had removed. Finding himself falling to the floor, he unconsciously seized the stand, upset it, and extinguished the light, so that his Excellency the Minister — for titles were scrupulously observed in those days — was received by a member of Congress lying on his back, but happily screened by total darkness.

Upon referring to the journals of Congress, it appears that on the fourteenth of February, 1788, it was resolved that the Count de Moustier be received as Minister Plenipotentiary from his most Christian majesty, and be admitted to a public audience on the twenty-sixth of that month. There being then no Executive, this was the ceremonial formally adopted by the Congress; and it was also prescribed that after such a public reception, the minister should wait personally on the members at their lodgings. On the designated day, the minister was personally intro-

duced by a committee appointed for the purpose, and having delivered his letter of credence, he addressed Congress in a set speech; to which the President of that body made a reply. All this is formally recorded; but the proceedings outside rest only in memory.

Clark was a rigid economist, and a steady advocate of popular measures. In 1787, although known to be opposed to the new Constitution of the United States, he was appointed by the legislature a member of the convention of this State called to ratify it; but ill-health prevented his taking his seat in that body. In 1791 and 1793 he was elected a member of Congress, and died in 1794, in the sixty-ninth year of his age.

By the terms of the State Constitution of 1776, all the inhabitants of the State, of full age, and worth fifty pounds, who had resided for twelve months in the county where they claimed a vote, were entitled to a vote. It is evident, however, that the Provincial Congress which framed this constitution, understood that it would be in the power of any subsequent legislature to restrict this privilege; for they themselves enacted an ordinance, as has been stated, which did this, and the first legislature prescribed oaths to be taken not found in it. But it was not long before it was found that a diversity of practice prevailed in different parts of the State. At an election held in 1806, for the selection of the county seat of Essex County, at which there was a warm contest between Elizabethtown and Newark, females and colored persons were allowed to vote, without inquiry as to their property; some persons, and among them some females, boasted that they voted under different names several times during the day and night the polls were kept open; and the fraudulent voting was so great,

that the legislature set aside the election. The fact disclosed by the evidence produced to the legislature in this case, occasioned the enactment of a new election law in November, 1807, which passed the Assembly by a vote of thirty-one ayes to five noes. There was at this time a majority of Democrats in the legislature, but it was not a party measure; the leading Federalists in the body, including the members from Burlington County, and the late James Parker of Middlesex, voted for it. The universal public opinion of the people sanctioned its provisions, which with but little change continued in force until altered by the Constitution of 1844, and the fifteenth amendment of the Constitution of the United States. This law commences with the following preamble: —

“ WHEREAS doubts have been raised and great diversities in practice obtained throughout the State, in regard to the admission of aliens, females, and persons of color, or negroes, to vote in elections, and also in regard to the mode of ascertaining the qualifications of voters in respect to estate; and whereas it is highly necessary to the safety, quiet, good order, and dignity of the State, to clear up the said doubts, by an act of the representatives of the people declaratory of the true sense and meaning of the constitution, and to insure its just execution in these particulars, according to the intent of the framers thereof;” therefore, it was enacted, that no person should vote, unless such person be a free, white male citizen of the State, of the age of twenty-one years, worth fifty pounds proclamation money; and that in order to establish a uniform practice throughout the State, and to avoid all questions in regard to the qualification of the voter as to estate, every person in other respects en-

titled to vote, who should have paid a tax, should be adjudged by the officers conducting the election to be worth fifty pounds clear estate, and entitled to vote.

It occasionally happened, however, that the officers of election disregarded this law, holding it to be unconstitutional and void, so far as it prevented aliens, females, and colored persons from voting. This happened in at least one township in Cumberland County at a contested election for the place of erecting a court-house in the year 1837 ; and this in part produced what was called the broad seal war the next year. From 1809 to 1845 the polls were required to be kept open two days, and it was customary in the large townships to hold the election at different places each day.

CHAPTER III.

GOVERNORS DURING THE WAR FOR INDEPENDENCE.

WILLIAM FRANKLIN. WILLIAM LIVINGSTON.

WILLIAM FRANKLIN was the Governor and Chancellor of the colony of New Jersey at the commencement of the Revolution. He was the son of Dr. Benjamin Franklin, but not of his wife (who his mother was is not known), and was born about the year 1730, his precise age being left in doubt, and apparently for a purpose. Upon the marriage of his father when he was about a year old, he was taken to his home, and brought up as if he had been born in wedlock. His father had but one other son, named Francis Folger, who died when a little more than four years old. William was carefully educated, aided his father in his philosophical experiments, and, through his influence, was at an early age appointed clerk of the House of Assembly of Pennsylvania, and postmaster at Philadelphia.

In 1756, when he was about twenty years of age, his father was appointed the agent for Pennsylvania (and afterwards of New Jersey) in England; and the son had leave from the Assembly to resign his office of clerk, that he might accompany him to London. Upon his arrival there he entered the Middle Temple, to prepare himself for practice as a lawyer in Philadelphia, and was in due time called to be a barrister;

afterward he received from the University of Oxford the honorary degree of Master of Arts.

Like his father, he became the parent of an illegitimate son, born about 1760, and named William Temple Franklin, who lived with his grandfather in London, and afterwards in France, becoming a great favorite with him, and as such remembered in his will. In 1762, William Franklin, who had ingratiated himself with Lord Bute, then the principal favorite of the king, through his influence, without the solicitation of his father, was appointed Governor of the Province of New Jersey, an office then much sought for. The first announcement of this preferment is stated to have been by a paragraph in the newspaper: "This morning, was married at St. George's Church, Hanover Square, William Franklin, Esq., the newly appointed Governor of New Jersey, to Miss Elizabeth Downes, of St. James' Street."

Governor Franklin and his wife arrived in the Delaware River in February, 1763; and reached Perth Amboy on the twenty-fourth of that month. He was received with the usual demonstrations of respect, had his commission publicly read, and took the oaths of office there. In a few days he proceeded to Burlington, and published his commission there, according to the usual custom. These two places had been the seats of the separate governments of East and West Jersey, under the proprietors, and after the two were united by the surrender to the Queen in 1702, they continued down to the Revolution to be alternately the places at which the legislatures met, and the courts of the province were held. Congratulatory addresses were made to him from all quarters; and in June, with his wife, he was entertained

by the corporation of Elizabethtown. He soon took his residence at Burlington, occupying, during a considerable part of his time, a house situate on the beautiful banks of the river there, where he remained until 1774, when he removed his residence to Perth Amboy.

The task undertaken by a governor of one of the provinces of Great Britain was one of great difficulty. That government did not go so far as Spain in its suicidal policy; but the only idea the king and his ministers and people had of a colony, was that it should be made to promote the real or supposed interests of the mother country. The welfare of the settlers, if regarded at all, was but a secondary consideration. Above all, they were expected to be entirely subservient to the prescriptions of the ruling power, and to dream of acting for themselves was treason. Where there was a local legislature, as in New Jersey, subject to the absolute veto of the crown, and the assent of the governor was a necessary prerequisite to the enactment of a law, it was thought necessary to restrain him from the exercise of his own judgment, by the most precise and stringent instructions. Every measure, thought likely to interfere with that monopoly of trade claimed as the absolute right of the British, was absolutely prohibited. Even many of the offices of the colony were expected to be sinecures for the dependents of the ministry.

A necessary consequence of this state of things was, that Franklin, like most of his predecessors, was engaged in a constant warfare with the Assembly elected by the people; the council he could manage, their appointments being at his disposal. His posi-

tion was probably very different from what he had expected. Very soon his difficulties were greatly increased by the persistent attempt of the king, and his ministers and parliament, to tax the people of the colonies, without the consent of their representatives, which they were resolute in resisting. He seems to have been an amiable man, and to have performed what he considered his duty, with so much forbearance and good temper as to have become quite as popular as any governor, who did not absolutely repudiate his instructions, could be. He was earnest in his endeavors to promote the welfare of the province, by recommending and encouraging measures for the improvement of roads, for the mitigation of the laws relating to the imprisonment of debtors, and for successful agriculture. He purchased and improved a farm, imported from England agricultural implements, and collected one of the best libraries in the province. He was a handsome and very agreeable man, abounding in facetious anecdote, and thus resembling his father. That father continued on good terms with him until the war was in active progress. In 1773, he wrote to him from London : "I only wish you to act uprightly and steadily, avoiding that duplicity which, in Hutchinson, adds contempt to indignation. If you can promote the prosperity of your people, and leave them happier than you found them, whatever your political principles are, your memory will be honored." His last visit to him was after he removed to Perth Amboy in 1774. They then discussed the controversy between the mother country and her colonies. They were far from agreeing. No man in America was more fully resolved upon resistance, at whatever cost, than the elder Franklin.

The son, who disapproved the earlier measures of the British ministry, was still mindful of his oath as a royal governor; and remained a thorough government man, deeming the opposition of the colonists more mad than the measures of the ministry. They did not meet again until the lapse of ten years. The father, after the governor's arrest, sent the grandson to Perth Amboy, to aid and console his afflicted daughter-in-law, and a small sum of money. She returned a grateful letter of thanks; but she never again saw her husband or her father. Dr. Franklin felt the defection of his son from the cause he had himself so much at heart very keenly. He wrote, nine years later, "that nothing had ever affected him with such keen sensitiveness, as to find himself deserted, in his old age, by his only son; and not only deserted, but to find him taking up arms against him in a cause wherein his good fame, fortune, and life were all at stake."

All the hopes, no doubt for several years fondly indulged in by Governor Franklin of the final success of the royal cause, were doomed to disappointment. He was arrested by order of the Provisional Congress in 1776, and confined as a prisoner of war. Had he lived a hundred or two years earlier, he would probably have lost his head. He was not exchanged, and in that way released, until he had suffered an imprisonment of two years and five months. In the mean time his library was burned by an accidental fire; and his wife, who is represented as an elegant woman, amiable and intelligent, died in New York. He took up his residence in that city, remaining there several years, aiding the royal arms, as President of the Board of Associated Royalists, and by all other

means in his power. In 1782, he returned to England, after a sojourn in America of twenty years. His son, William Temple, remained with his grandfather. Thus, in the language of Parton, "was the strange coincidence made complete: Dr. Franklin lost his son; that son lost his; both sons were born just before their fathers' marriage; both were reared and educated in disregard of that circumstance; both abandoned their fathers, at the same time and for the same cause; afterwards they were both reconciled to their fathers, at about the same time, and in about the same imperfect degree."

In consideration of the losses he had sustained by the confiscation of his property and otherwise, the British government granted to him eighteen hundred pounds, nearly nine thousand dollars, and allowed him a pension of nearly four thousand dollars a year, thus placing him, in a pecuniary point of view, in a better situation than if he had remained Governor of New Jersey. He afterwards married again, an Irish lady, and died in 1813, at the age of about eighty-three. He left no legitimate descendants. His son, William Temple Franklin, resided in France, wrote a biography of his grandfather, and died in 1823, at the age of sixty-one.

The author of a work published in London in 1802, containing biographical notes of living characters, who professes to write from personal observation, says: "Governor Franklin, in point of person, is above the common size, with the eye and figure of a veteran. Although subject to the gout, he appears to be strong and athletic, and was accounted one of the handsomest men in America. He is now about sixty-five years of age, and resembles his father in a variety of partic-

ulars. Like him he is cheerful, facetious, admirably calculated for telling a pleasing story, and no enemy to social converse, hilarity, and the pleasures of the table, when indulged in moderation. Like him, too, he makes his ablutions every morning, and is equally partial to an air and a water bath."

WILLIAM LIVINGSTON. The first Governor of New Jersey under the Constitution of 1776, was one of a family for many years very distinguished in the history of the United States, which of late years has ceased to be remarkable. He was the grandson of Robert Livingston, whose father was eminent in Scottish history, as a minister of the Kirk. After the restoration of Charles II., father and son fled to Holland, and from there Robert came to America, about the year 1675, and in 1679 married Alida, the widow of Nicholas van Rensselaer, and resided at Albany. Having made large purchases of land from the Indians, the manor and lordship of Livingston was granted to him in 1686, and confirmed by royal authority in 1715. It was the second largest of the five great manors granted in the province of New York, which in later days have been so fruitful of anti-rent troubles, and comprised nearly one hundred and fifty thousand acres of land, commencing about five miles south of the present city of Hudson, running twelve miles along the east bank of the Hudson River, and extending back to the line of Massachusetts. It was somewhat divided at an early period, but the greater part of it was strictly entailed and transmitted through the two next generations, in the hands of the eldest son and grandson. Philip, the father of William, was the second son of Robert; but the elder

brother having died, he succeeded to the manorial estate. He married Catharine van Brugh, of a respectable Dutch family, at Albany. Their son William was the fifth child, and was born at Albany in the year 1723. In 1741 he graduated at the head of his class at Yale College. It is said that at that time, besides himself and three elder brothers, there were only six persons not in orders, in the province of New York, who had received a collegiate education. He studied law with James Alexander, at that time one of the most eminent lawyers in the city of New York, who was distinguished by his constant advocacy of popular rights and steady opposition to ministerial assumptions. In a letter to his father, dated in 1744, young Livingston says: "I have received your letter of November 21, whereof the first two lines are, 'I am much concerned to hear that you neglect your study, and are abroad most every night.' As to neglecting my study, I am as much concerned to hear it as my father, having read the greatest part of this winter till twelve and two o'clock at night, and since I have had a fire in my room have frequently rose at five in the morning and read by candle-light, of which I suppose your informer (whatever ingenious fellow it be) was ignorant, as it was impossible he should know it without being a wizard. As to my being abroad almost every night, I have for this month stayed at Mr. Alexander's till eight and nine o'clock at night, and shall continue to do so all winter, he instructing us in the mathematics, which is indeed being abroad."

In the year 1745 he married Miss Susanna French, whose father had been a large proprietor of land in New Jersey. He was licensed to practice law in

1748, and soon became a prominent member of the bar, and employed in most of the important legal controversies of that day, in New York and New Jersey. In 1752 he was one of the counsel of the defendants, in the great suit in chancery, between the proprietors of East Jersey and some of the settlers, which, although never brought to a final decision, has been much referred to in reference to the title to a considerable part of East Jersey.

He was brought up in the Reformed Dutch Church, and engaged earnestly in the controversies which arose with the Episcopalian party, in reference to an established religion. These controversies, in which the feelings of the Congregationalists and Presbyterians became so strongly excited, had much to do with the resistance subsequently made to the attempt of the British ministry to impose taxes on the American Colonies, and resulted in their unanimous support of the measures adopted for that purpose. Livingston engaged earnestly in this controversy, and wrote largely on the subject. He was fond of using his pen, and was distinguished for sarcastic wit. As early as 1747 he published a poem of seven hundred lines, entitled, "Philosophic Solitude," which has since been several times reprinted, but is now seldom read. During most of the time he remained in New York, he wrote extensively on the political subjects of the day, and published a "Eulogy on the Rev. Aaron Burr" and various poetical effusions.

In 1772, when he had arrived to the age of nearly fifty years, he removed to Elizabethtown, in the vicinity of which he had purchased, at different times, a tract of land comprising about one hundred and twenty acres, and which he had improved by import-

ing and setting out various species of fruit-trees. After his removal, he erected a new house, in which he placed his family in the fall of 1773, and made it his home, except while obliged to be absent during the war, the remainder of his life. This place was generally known, while he occupied it, as Liberty Hall; but after his death, it became the property of Mrs. Niemsiwitz, who was a Livingston (his cousin, I believe), the widow, first of Peter Kean, at one time cashier of the Bank of the United States, and afterwards of a Polish nobleman, a follower of Kosciusco, who resided for a time in this country, and was then called Ursino. It is now owned by John Kean, Esq., her grandson.

A statement of his property, drawn up at this time, valued it at £8,512, New York currency, about twenty-one thousand dollars, esteemed at that time sufficient for the comfortable support of a family. A memorandum he afterwards wrote on this statement, is to this effect: "The sum at the foot of this, I was worth when I removed, besides leaving behind me £2,000 due me for costs, and besides the land left me by my father. As I was always fond of a country life, and thought that at that time I could with justice to my dear children go into the country, where the interest of that sum would more than maintain me, I accordingly went with the intention to lay up the surplus for their use; but so it has fortuned, by the breaking of some of my debtors, and by others paying me in Continental depreciated money, that I have not been able to answer that agreeable object; and for those unforeseen occurrences, I hope my children will not blame me, having not spent my fortune by extravagant living, but have lost it by inevitable accident."

As he had been admitted to the bar of New Jersey in 1755, and like other lawyers in the adjoining provinces, had been more or less engaged in suits here, he still continued to practice his profession in a few cases. Before his removal the public money chest of Stephen Skinner, treasurer of the eastern division, was broken open, and six or seven thousand pounds of paper and coins stolen. A majority of the Assembly resolved that this had happened through the negligence of the treasurer, and insisted upon the money being repaid by him. Although Governor Franklin warmly espoused the side of Skinner, Livingston was consulted, and Skinner having after much delay resigned, a new treasurer was appointed and an action brought to recover the missing money. The action however was never brought to a trial. Skinner adhered to the British, and all his New Jersey property was confiscated and sold.

Livingston was appointed by the committee which met at New Brunswick July, 1774, a majority of whose members were also members of Assembly, a delegate to the Continental Congress, and was a member of the committee of that body, appointed to prepare the address to the people of Great Britain. He joined in signing the non-consumption and non-importation association, and faithfully maintained the pledge. It is said some of the members of his family were accustomed in his absence to drink what they called "Strawberry Tea," but which was strongly suspected to be the genuine Chinese beverage. In January, 1775, he was reelected delegate to the Congress by the Assembly; and was a very constant member of the most important committees. He was a steady attendant, and was reelected a delegate by the Pro-

vincial Congress in February, 1776, serving with Adams, Jefferson, and Lee on committees. In June, he left the Congress at Philadelphia, to take command of the militia of New Jersey as a brigadier-general, to which he had been some time before appointed by the Provincial Congress.

He was among those — including, as is well known, many of the most determined Whigs — who doubted the expediency of the Declaration of Independence, at the time it was made. In a letter dated in February, 1778, he says: “As to the policy of it, I then thought, and I have found no reason to change my sentiments since, that if we could not maintain our separation without the assistance of France, her alliance ought to have been secured, by our stipulation to assert it on that condition. This would have forced her out into open day, and we should have been certain either of her explicit avowal, or of the folly of our dependency upon it.” But he assumed a prominent military command, although he had no military training or experience. In another letter he says: “We must endeavor to make the best of everything. Whoever draws his sword against his prince, must fling away the scabbard. We have passed the Rubicon, and whoever attempts to cross it will be knocked in the head, by the one or the other party, on the opposite banks. We cannot recede, nor should I wish it if we could. Great Britain must infallibly perish, and that speedily, by her own corruption, and I never loved her so much, as to wish to keep her company in her ruin.”

In October, 1775, he had been appointed by the Provincial Congress second brigadier-general of the military forces of the colony, General Dickinson

being his senior. On the twenty-first day of June, 1776, it was resolved that the President write to General Livingston and inform him that it is the desire of Congress that he would take the command of the militia destined for New York. This he hastened to do, having his head-quarters at Elizabethtown point. His family were soon obliged to abandon their home, no longer a safe residence, and during the next three or four years, they resided at Parsipany. He was thus prevented from taking part in the Declaration of Independence. If he had remained a delegate to the Continental Congress, and been directly empowered, as those designated for that position succeeding him were, so to do, he would no doubt have signed that instrument, as they did. It appears by a letter he addressed to Samuel Tucker in August, that he somewhat resented appointing him to a command, which he says he plainly refused, instead of continuing him a delegate to the Congress.

Resolute however in answering the call of his country, even by accepting a situation for which he had no special fitness and very irksome to him, he discharged the duties thus devolved upon him with vigilance and ability. In a letter written in July to the Congress he says: "I must acknowledge to you, that I feel myself unequal to the present important command, and therefore wish for every assistance in my power." And in August he wrote to a Congressman at Philadelphia: "I received yours of yesterday's date, just after I had got into my new habitation, which is a marquee tent in our encampment. You would really be astonished to see how grand I look, while at the same time I can assure you I was never more sensible (to use a New England phrase) of my

own nothingness in military affairs. I removed my quarters from the town hither to be with the men, and to inure them to discipline, which by my distance from the camp before, considering what scurvy subaltern officers we are ever like to have, while they are in the appointment of the mobility, I found it impossible to introduce. My ancient corporal fabric is almost tottering under the fatigue I have lately undergone, constantly rising at two o'clock in the morning, to examine our lines, which are — and very extensive, till daybreak, and from that time till eleven, in giving orders, sending dispatches, and doing the proper business of quartermasters, colonels, commissaries, and I know not what."

He was soon relieved from his military command, and placed in a situation more conspicuous and more important, and to which, by all the habits of his life, he was better fitted. The first legislature under the new constitution assembled at Princeton, and on the 27th of August, 1776, the joint meeting proceeded to elect a governor. The vote was by a secret ballot, and at first there was a tie between him and Richard Stockton. On the next day, probably in pursuance of a previous arrangement, Livingston was elected governor, and Stockton chief justice of the supreme court. Livingston accepted the trust, but Stockton declined. As the State had no seal, it was resolved that the seal at arms of his Excellency William Livingston, should be deemed taken and used, as the great seal of the State, until another could be procured. In a short time a great seal of silver was engraved in Philadelphia, having the devices still in use, and was lettered, "The great seal of the State of New Jersey," the word colony used in the constitution being entirely discredited.

On the thirteenth of September, the governor made an address to the two Houses, in which he says: "Considering how long the hand of oppression had been stretched out against us; how long the system of despotism, concerted for our ruin, had been insidiously pursued, and was at length attempted to be enforced by the violence of war; reason and conscience must have approved the measure had we sooner abjured that allegiance from which, not only by a denial of protection, but the hostile assault on our persons and properties, we were clearly absolved. That being thus constrained to assert our own independence, the late representatives of the colony of New Jersey in Congress assembled, did, in pursuance of the advice of the Continental Congress, the supreme council of the American colonies, agree upon the form of a constitution which, by tacit consent and open approbation, hath since received the consent and concurrence of the good people of the State; and agreeably to this constitution, a legislative council and assembly have been chosen, and also a governor. Let us then, as it is our indispensable duty, make it our invariable aim to exhibit to our constituents the brightest examples of a disinterested love for the common weal; let us both by precept and example, encourage a spirit of economy, industry, and patriotism, and that public integrity and righteousness that cannot fail to exalt a nation; setting our faces at the same time like a flint against that dissoluteness of manner and political corruption, that will ever be the reproach of any people. May the foundation of an infant State be laid in virtue and the fear of God, and the superstructure will rise glorious and endure for ages. Then may we humbly

expect the blessings of the Most High, who divides to the nations their inheritance and separates the sons of Adam."

An expression in this address, it is said, occasioned the governor to be known for a time by the name of "Doctor Flint." He was reëlected the governor, from year to year, with occasionally slight opposition, as long as he lived; and with an interregnum from August 31 to November 1, 1777,—during which time there was no governor, growing out of the fact that his term of office was one year, and the second legislature under the constitution did not meet until two months after his first term expired,—he held the office of governor and chancellor of the State nearly fourteen years.

His task, especially during the first two years of his service as governor, was most difficult and dangerous. The State was in every part of it more exposed, and suffered more from military operations than any other. Within a few months after his inauguration, the upper part of it was occupied by the enemy, and until the happy turn of affairs, occasioned by the victories at Trenton and Princeton, during the winter of 1776-77, everything was in jeopardy. Many who had been prominent in all the preparations of resistance despaired of success, and took protections from the British officers. The legislature was obliged to meet sometimes at Trenton, and then at Princeton, at Pittstown, in Hunterdon County, and at Haddonfield, and during several years occasioned much inconvenience by moving from place to place, sometimes for no better reason than because the members thought the charges for board were too high. The governor stood firm, and was unremitting

in his efforts to procure the passage of efficient militia laws, and in otherwise organizing a new government.

One of the first laws enacted by the new legislature, September 19, 1776, for the security of the government of New Jersey, required every officer, civil and military, then in office or thereafter to be appointed, to take an oath or affirmation that he did not hold himself bound to bear allegiance to the king of Great Britain, and that he did and would bear true faith and allegiance to the government established in this State under the authority of the people; and provision was made in this and subsequent acts for requiring jurors and voters and all others, under heavy penalties, to take the same oaths. An act was also passed to punish traitors and disaffected persons, which defined the crime of treason, and prescribed a punishment by fine and imprisonment against all persons who should by speech, writing, open deed or act, maintain and defend the authority, jurisdiction, or power of the king or parliament of Great Britain.

The Assembly convened at Burlington on the thirteenth day of November, and passed one law, but on the second day of December, they dispersed without fixing upon any place of future meeting. But on the twenty-second day of the ensuing January, they assembled on the call of the speaker, at Haddonfield, and continued in session there until the middle of March. Here a law was passed, that a dollar in silver or in the paper bills of Congress, should be equal to and pass for seven shillings and sixpence. And what was still more important, an act was passed, temporary in its duration, but extended from time to

time, constituting a committee of safety, consisting of twenty-three persons,—the governor or vice-president being one,—and declaring them to be a board of justices in criminal matters, and with power to fill up vacant military offices; to apprehend disaffected persons, and commit them to jail without bail or mainprise, and to remove them from jail to jail; to call out the militia to carry out their orders; to send the wives and children of fugitives with the enemy, into the enemy's lines; to cause offenders to be tried in any county of the State; to cause persons refusing to take the oaths to government to be committed to jail, or to send them, if willing, into the enemy's lines; to make any house or room a legal jail; to negotiate exchanges; disarm the disaffected, etc. This committee was of special importance during the two months while there was no governor.

It could not be otherwise than that the governor of a State, situated as New Jersey was at this time, should be subject to constant alarm and danger. He was determined in his hostility to those who embraced the cause of the enemy, and recommended and enforced the strongest measures against them, thereby of course exciting their bitter hostility. A letter from one of his daughters, dated in November, 1777, says: "K—— has been to Elizabethtown; found our house in a most ruinous situation. General Dickenson (an American general) had stationed a captain with his artillery company in it, and after that it was kept for a bullocks' guard. K—— waited on the general, and he ordered the troops removed the next day, but then the mischief was done; everything is carried off that mamma had collected for her accommodation, so that it is impossible for her to go

down to have the grapes and other things secured ; the very hinges, locks, and panes of glass are taken away."

"Rivington's Gazette," the organ of the British party in New York, was very bitter in its denunciations of Livingston. He is called the "Spurious Governor," "Don Quixote of the Jerseys," "Despot in chief in and over the rising State of New Jersey, extraordinary Chancellor of the same," "Knight of the most honorable order of starvation, and chief of the Independents." "If Rivington is taken," he wrote in 1780, "I must have one of his ears ; Governor Clinton is entitled to the other ; and General Washington, if he pleases, may take his head."

To counteract in some measure the influence of the royal gazette, a paper was commenced in December, printed by Isaac Collins, sometimes at Trenton and sometimes at Burlington, called the "New Jersey Gazette." This paper was continued mostly through the war, and was essentially aided by the governor, who contributed many articles, which attracted much attention, and were of important service. Some of them were afterwards reprinted by Carey in his "American Museum."

Popular as Livingston evidently was, he did not escape personal hostility and bitter opposition. On the 27th of October, 1779, just before his reëlection by the joint meeting, a virulent attack upon him not by name but by plain allusions, appeared in Collins' gazette over the signature of "Cincinnatus." The council on the next day passed the following resolutions by a large majority, and sent it to the Assembly for concurrence : —

"WHEREAS, by a late publication, inserted in the 'New Jersey

Gazette,' called, 'Hints humbly offered to the consideration of the legislature of New Jersey, in the future choice of a governor, signed 'Cincinnatus,' being apparently designed to have an undue influence in the ensuing election of a governor of this State, and though in an ironical way, fully and clearly implies, not only a slur upon the seminary of learning in this State, and the president and tutors thereof, but also a tacit charge against the legislature of this State, as being greatly deficient in point of integrity or ability and judgment, in the choice of a governor, and an express declaration against our excellent constitution; and also an unjust, false, and cruel defamation and aspersion of his excellency the governor; all which evidently tends to disturb the peace of the inhabitants and promote discord and confusion in the State, and to encourage those who are disaffected to the present government; and notwithstanding the freedom of the press ought to be tolerated as far as is consistent with the good of the people and the security of the government established under their authority; yet good policy as well as justice require that those who speak anything that directly tends to encourage the enemy and disaffected, and to discourage or disquiet the minds of the good people of this State, ought to be detected and brought to such punishment as may be agreeable to law and justice; therefore, Resolved, that Isaac Collins be required immediately to inform the legislature of this State, who is the author of the abovesaid publication, and at whose request the same was published."

This resolution was negative in the Assembly by seventeen nays to eleven yeas. On the next day, however, the council "Resolved, that Isaac Collins be required immediately to inform the council who the author of the publication inserted in the 'New Jersey Gazette,' No. 96, under the signature of 'Cincinnatus' is, and at whose request the same was published." A copy of this resolution was served on Collins, but he declined making any answer. On the thirtieth the joint meeting reelected Livingston governor, by a vote of twenty-nine in his favor, against nine votes for Philemon Dickinson.

In consequence of this proceeding Livingston

ceased for some time to write for the "Gazette"; but afterwards the breach was healed, and he continued his contributions. It is said by Sedgewick in his valuable and full memoir of Livingston, that he ceased for some time to write for the newspapers in consequence of the remonstrances of some of the members of the legislature, who considered such an employment rather undignified for his excellency the governor of a State. This is quite probable, especially as some of his articles may have been deemed rather personal to them. One of them purported to state what the writer "had seen and had not seen;" and bore with much severity on some of the legislative proceedings. Another article, entitled "Strictures of Liliput," not published, however, until after the peace, is so plainly leveled at the proceedings of the legislature of New Jersey, as to be worth perusal. It was republished in Carey's "Museum" for May, 1791.

Of the date of 9th of October, 1778, he wrote to Laurens: —

"Our assembly being dissolved by the constitution, and the act constituting our council of safety expired by its own limitation, I stand some chance of seeing my family at last, and perhaps the devil and the Tories may so manage their cards at the ensuing election that I may have no avocation to leave it in future.

"Your Excellency has by this time seen (the last, I know not whether I can say, considering that some people make more dying speeches than one) but the second dying speech of the British commissioners. Does not the very pomposity of the vellum, and the grandeur of the types and margin, strongly operate towards your conversion? No! well, I am sure the matter will not.

"Thanks to their excellencies, however, for the quantity of waste paper with which they have furnished me, under the denominations of proclamations, and the excellent tape which surrounded the packets, of both of which I stood in most lamentable need. Con-

ceiving that they would afford very little edification to the several bodies in this State, civil, military, and ecclesiastical, to which they were directed, I have made prize of almost the whole cargo, without any lawful condemnation of the admiralty, with felonious intent to convert them to my own private use. His Majesty's arms, however (having in days of yore heard so much about the Lord's anointed), I shall carefully separate from the rest of the sheet, and apply to the embellishment of my little grandson's kite. And O! for the vellum original, signed and sealed with their excellencies' own proper hands and seals: I'll certainly lay it up in lavender, that if I am hanged at last, my latest posterity may know that it was through downright love of hanging, after having refused so gracious and unmerited a pardon on repentance, with so grim frowning a lion at the top, denouncing the royal vengeance in case of contumacy."

Governor Livingston's peculiar fitness for the station in which he was placed, was shown in the circumstance, very evident in the correspondence between them, that he had the most implicit confidence in General Washington. General Hamilton, while an aid of the latter, remarked in a playful letter to one of Livingston's daughters, refusing her application to obtain leave for some of her lady friends, residing in New York, to pass a short time with her in New Jersey, most truly: "I shall therefore only tell you, that whether the Governor and the General are more honest, or more perverse than other people, they have a very odd knack of thinking alike; and it happened in the present case, that they both equally disapprove the intercourse you mention, and have taken pains to discourage it."

He was frequently appealed to, in regard to the enforcement of the laws of the State, making the Continental money a legal tender, and of course did so in all his official acts; but he always opposed the passage of such laws, and would not avail himself

of them in his own favor. He writes: "No acts of Assembly have hitherto been able to reconcile me to cheating according to law, or convince me that human legislation can alter the immutable duties of morality." His strictures of Liliput were evidently written to disparage all such laws. He was also addicted to versifying, and wrote, —

"For useless a house-door, e'en if he would lock it,
When any insolvent legislative brother
Can legally enter into a man's pocket,
And preamble all his cash into another."

As soon as peace was proclaimed, he left Trenton, where he had resided for three years, and returned to his house at Elizabethtown, rejoiced to be again able to relinquish his wandering life, enter again his deserted library, and employ some of his leisure in the superintendence of his garden and orchards. In a letter to his wife, dated in 1783, he had said: —

"As to your opinion about disposing of our place at Elizabethtown, I cannot think that I am under any necessity of doing it, because, though I have greatly suffered by the war, I have good estate left, if I can but get the time to put it in order. However, anything that may appear most advantageous to my children, I would readily consent to, especially for the sake of my two unmarried daughters, whom I am determined not to leave to the mercy of an unfeeling world. But as to hiring a place, I should not like it, because in that case, if I should die before you, you would be at the mercy of a landlord, without a house of your own to put your head in."

In a letter to the speaker of the Assembly, in 1781, he had written: —

"On being elected to the government in October, 1780, I informed the then Assembly, by letter to the speaker, after having pointed out how greatly I had suffered in the payment of my salary by the depreciation of the money, that I accepted the appointment for the then ending year, in confidence that, whatever

the salary might be, the honorable house would make it good. As I never received any answer to the terms of the acceptance, I had reason to conclude that this silence evinced their acquiescence; and as our legislatures are annual, unless each succeeding one thinks itself bound by the engagements of its predecessors, it is certain that all faith in government must necessarily be annihilated. And, indeed, had I made no intimation whatever on the subject, I cannot presume that the present legislature would think it reasonable that I should be paid the nominal sum stipulated, without any allowance for the depreciation of the money, which would in effect amount to a declaration that my services were not worth above four hundred pounds a year, and that such salary was a sufficient support for any creditable family."

The sum of £300, in state lawful money, less depreciated than the Continental money, was added to his salary; but altogether his salary and perquisites did not exceed one thousand dollars in specie.

In June, 1785, he was appointed by Congress to be our minister at the court of Holland, and for several reasons was at first disposed to accept it; but eventually declined. In 1786 he became a member of the society in New York for promoting the emancipation of slaves; and himself emancipated the two slaves he owned, resolving never to own another.

He was naturally much alarmed, as so many of the best and most ardent patriots of the nation were, for several years after the peace, at the gloomy prospect of our national affairs. In a letter of 1787, he says: "Our situation, sir, is truly deplorable, and without a speedy alteration of measures, I doubt whether you and I shall survive the existence of that liberty, for which we have so strenuously contended." In May, 1787, he was appointed by the legislature one of the delegates to the convention assembled to form a constitution for the United States, which so happily succeeded. He took his seat early in June, and was a

very constant attendant on its deliberations. Mr. Madison says in a letter on this subject:—

“Mr. Livingston did not take his seat in the convention till some progress had been made in the task committed to it, and he did not take any active part in the debates; but he was placed on important committees, where it may be presumed he had an agency and a due influence. He was personally unknown to many, perhaps most of the members; but there was a predisposition in all to manifest the respect due to the celebrity of his name. The votes of New Jersey corresponded generally with the plan offered by Mr. Paterson, but the main object of that being to secure to the smaller States an equality with the larger, in the structure of the government, in opposition to the outline previously introduced, which had a reverse object, it is difficult to say what was the degree of power to which there might be an abstract leaning. The two subjects, the structure of the government and the quantum of power for it, were more or less inseparable in the minds of all.”

He was among those who affixed his name to the draft finally agreed upon, and was a decided advocate of its ratification.

In his message to the legislature in August, 1788, he says:—

“I most heartily congratulate you, gentlemen, on the adoption of the Constitution proposed for the government of the United States, by the federal convention, and it gives me inexpressible pleasure that New Jersey has the honor of so early and so unanimously agreeing to that form of national government, which has since been so generally applauded and approved of by the other States. We are now arrived to that auspicious period, which, I confess, I have often wished that it might please Heaven to protract my life to see. Thanks to God, that I have lived to see it.”

The faculty of Yale College, in 1788, conferred on him the degree of LL. D. The next year, he had the misfortune to lose his wife, with whom he had lived happily forty-five years. On the twenty-fifth day of June, 1790, he died himself. He had thirteen children, of whom six died before him. One son,

Brockholst Livingston, became a distinguished lawyer in New York, was several years one of the judges of the supreme court of that State, and from 1807 until his death in 1823, one of the justices of the supreme court of the United States.

The Rev. Dr. McWhorter of Newark, at his funeral, spoke of him as follows: —

“Our governor was a person of inflexible uprightness and the strictest honesty; an eminent example of virtue in his life and conversation, as well as fixed and unshaken in his Christian principles. His religion partook not in the least of any deistic complexion, which is too prevalent among the greatest of our day. After the fullest investigation of the subject, he rested in the certain conviction of the divinity of Christianity. He obeyed its precepts, and experienced its power.

“It is no uncommon loss that we this day mourn, therefore no common sorrow can be adequate to the gloomy, the dark and awful occasion. It is not a single family that this day mourns. It is not a single society, town, or county, but our whole land feels the stroke, and our bereaved State is most sensibly affected. The head, the guide, the director, and he who held the helm of our government, is no more.”

It was certainly a most happy Providence that gave to New Jersey, during the trying time of the Revolution, and for several following years, a governor so well fitted by his character and acquirements, not only to inspire the people with courage and perseverance, and to coöperate heartily with Washington, during all the changes of a war to which they were especially exposed, but to guide the legislature in the inauguration of a new and untried system of government. Chosen but for a single year, it was important to have a man of sufficient popularity to secure a reëlection in spite of the cavils of those whose plans he found it necessary to oppose. With but the smallest amount of power or patronage,

and besides his important judicial functions as chancellor and ordinary, being only the presiding officer of the legislative council, with only a casting vote, it was equally important to have a man of decided republican principles and of sound legal attainments, that he might exercise a salutary influence over legislation, so liable to take a wrong direction. All these qualities were combined in Livingston; and although his writings show how much he was dissatisfied with those legislative measures which interfered so wrongfully between debtor and creditor, it is evident from an inspection of the statutes, enacted while he was governor, that many of the most important of them were drawn by him, or underwent his careful revision. And it was fortunate, too, that he was succeeded by an equally well-informed and able lawyer; and that thus it has happened that no State of the Union started in the career of independent sovereignty with a code of laws so nearly perfect, and so well adapted to secure to the people vigorous and safe progress; and an administration of justice, pure and enlightened, upon which the suspicion of a corrupt taint has never fallen.

CHAPTER IV.

GOVERNORS AFTER THE WAR FOR INDEPENDENCE.

WILLIAM PATERSON. RICHARD HOWELL.

WILLIAM PATERSON, Governor from 1790 to 1793, was a native of the north of Ireland, from whence he came with his father in the year 1747, when he was about two years old. They lived at Trentown, as the place was then called, at Princeton, and finally at Raritan, now Somerville, where his father died in 1781. William graduated at Princeton in 1763, and then studied law with Richard Stockton, one of the signers of the Declaration of Independence, Jonathan Dickerson Serjeant being a fellow student. He received his license as an attorney in 1769, and settled for a short time in Hunterdon County, at a place then called New Bromley. He passed, however, some part of his time with his father at Princeton, and took a part with him and his brother in mercantile business.

In 1775 he was chosen one of the delegates from the County of Somerset to the Provincial Congress, which met in May, and was appointed one of the assistant secretaries of that body; and upon Mr. Serjeant being elected treasurer of the province, and resigning his appointment as secretary, Paterson was chosen his successor. At the meeting of the Congress in October, he was again appointed secretary. He

was also a delegate to the Congress which met at Burlington in June, 1776, and was again unanimously chosen secretary. The journal of that body shows that he voted with the majority on the second day of July for then confirming the draft of the Constitution of the State ; but on the next day he voted with Frelinghuysen and Serjeant for deferring the printing a few days in order to reconsider, in a full house, the propriety of the last clause, containing the proviso respecting reconciliation. He was one of those who considered it as a temporary expedient, and, some years after the peace, wrote and published several articles in favor of revising it.

Upon the organization of the state government in 1776, Paterson was selected for the important station of attorney-general, he being at the time a member of the legislative council. His duties in this office were difficult and arduous. It became necessary for him to attend the criminal courts in the different counties, at a time when the armies of a hostile power were frequently invading the State, and the only means of communication were by long and painful journeys, mostly on horseback. He appears to have resided at Raritan, where, in 1779, he married his first wife. It appears by a letter he wrote to Governor Livingston in August, 1777, that a court was held in Newark. He says : " I am amazed that the Congress do not act agreeably to their resolution, and push into exercise the law of retaliation. We deserve to be insulted, because we bear it. If we were to treat the soldiers of the enemy, who are prisoners with us, in the same manner that they treat our soldiers, who are prisoners with them, it would soon produce a mild and humane course of conduct. All the Jersey officers

who have been taken by the enemy are now in the Provost, and treated in the most severe and barbarous manner. Perhaps a letter from your excellency and the council, addressed to Congress, might be productive of the happiest effect. Mr. Justice Smith arrived at this place yesterday about noon. The chief justice and Mr. Smith agreed that it would be improper to hold the next supreme court at Amboy, and I make no doubt your excellency will be of the same opinion. I wish that your excellency and the privy council would direct an ordinance to be made out altering the place, but not the time of holding court. I requested the judges to give their opinions respecting the most proper place to have it held ; and, on considering the matter, they agreed that Princeton, which lies in the eastern division, would be the most proper place. The supreme court will come on the first Tuesday of next month.” Under the colonial government, the governor and council appointed the times and places of holding the courts by ordinance, and issued commissions of oyer and terminer,—a practice which, of necessity, seems to have been for some years followed by the governor and council under the constitution.

In December, 1780, the attorney-general writes to Mr. Stevens, speaker of the Assembly, as follows : “On my return from Sussex Court I met with your letter, which notifies me of my being in the delegation of Congress. The appointment was unexpected, especially as some of the gentlemen of the legislature were fully possessed of my sentiments on the occasion. From the commencement of this contest I have held myself bound to serve the public in any station in which my fellow-citizens might place me,

and it is therefore with regret that I find myself under the necessity of declining the present appointment. I look upon it, however, as an act of justice to myself, as well as of respect to your honorable body, to declare that my non-acceptance of the legacy is owing to its interference with my official duty in another line. The business of a criminal nature in this State is at present intricate and extensive ; it unavoidably occupies the far greater part of my time. I feel its weight, and have more than once been ready to sink under it. Of the business of Congress, its variety, extent, and importance, I shall forbear to speak. Viewing these offices as I do, I am convinced that no one man can execute them both at the same time. If he can acquit himself well in one of them at once, it is full as much as can reasonably be expected. I am sure I shall count it one of the happiest circumstances of my life, if, in the execution of my present trust alone, I can give satisfaction to the public under which I act."

The members of the Continental Congress, for the first two or three years of the war, consisted of the leading spirits from the different colonies, who were justly the admiration of the best men in Great Britain and on the continent ; and by their measures and addresses they gave a character to the Revolution which procured for them the support they so much needed. But after the state governments were formed, and the war was in full progress, so many of the best men were withdrawn from Congress as to excite the fears of careful observers. This was indeed one of the causes of the little success of the confederation. It was with the greatest difficulty that a quorum of Congress could be kept in session ; and they failed,

when they met, to command the respect of the people. John Adams, in one of his letters, remarks of the members, "that a large part of them were unworthy of confidence."

Paterson was reëlected at the end of his first term, but upon the return of peace in 1783 he resigned this appointment, and resumed his practice as a lawyer, taking up his residence in New Brunswick, where he continued to reside until his death. The Rev. Mr. Clark, minister of the Presbyterian Church which he attended, says of him in his funeral sermon: "I need not remind you of his virtues as the citizen and the friend, and how they adorned his character in the walks of private life, or amid the more secluded retreat of the domestic circle and the home fireside. You knew him well, and the grief you manifest for his loss is the best evidence how affectionately you regard his virtuous example, his distinguished prudence, his love of justice, his fidelity in friendship, his readiness to oblige, his kindness to the poor, his generous hospitality, and the dignity of his deportment, tempered with the mildness of the amiable citizen, the agreeable, the interesting, and the instructive companion."

During the war the great defects of the articles of confederation were apparent; but upon the establishment of peace they became so manifest as to excite the apprehensions of the most intelligent and patriotic citizens throughout the different States. The legislature of New Jersey, as early as 1783, had sent a representation to the Congress, pointing out some of these defects, and containing the most just and enlightened views respecting a federal compact, in advance, indeed, of those then generally prevailing.

They especially objected to the articles by which the regulation of trade and commerce was committed to the several States within their respective jurisdictions. They say, "We are of opinion that the sole and exclusive power of regulating the trade of the United States with foreign nations ought to be clearly vested in the Congress; and that the revenue arising from all duties and customs imposed thereon, ought to be appropriated to the building, equipping, and manning a navy for the protection of the trade and defense of the coasts, and to such other public and general purposes, as to the Congress shall seem proper, and for the common benefit of the States." Several other defects were pointed out, the most important of which was that the vacant and unpatented lands, commonly called the crown lands, within the limits of the States, which had been conquered by the prosperous issue of a war undertaken for the general defense and interest of the confederating colonies, were not authorized to be disposed of for defraying the expenses of the war and other public and general purposes.

After various efforts in the Confederate Congress to induce the States to give their delegates authority to grant additional powers to that body, Virginia took the lead in calling a convention to propose amendments, which resulted in a meeting of commissioners from five States, of which New Jersey was one, in September, 1786. This convention recommended to the several States to send delegates to meet in Philadelphia in the succeeding May, and sent copies of its proceedings to the respective legislatures and to the Congress. Congress resolved that, in its opinion, such a convention should be held for "the sole and express purpose of revising the articles of confedera-

tion, and reporting to Congress and the several legislatures such alterations and provisions therein as shall, when agreed to in Congress and confirmed by the States, render the Federal Constitution adequate to the exigencies of government and the preservation of the Union."

The legislature of New Jersey approved the plan as early as November, 1786, and sent as commissioners David Brearly, chief justice ; William C. Houston, William Paterson ; William Livingston, governor ; Abraham Clark, and Jonathan Dayton. Clark was prevented by ill health from attending ; the others, except Houston, took part in the proceedings, and eventually signed the constitution agreed upon. They were undoubtedly the first men of the State in character and attainments ; and Paterson seems to have been their leader. Seldom, indeed, if ever, in the history of the world, has a body of men assembled superior in ability and acquirements to the convention which met in Philadelphia in May, 1787, and concluded its labors by promulgating the Constitution of the United States on the seventeenth of the succeeding September. General Washington, a commissioner from Virginia, was unanimously chosen as president.

Two plans were submitted to the convention, which for some time formed the basis of the discussion. One by Edmond Randolph of Virginia was referred to as the Virginia plan, and proposed in substance a national government, and received the support of the larger States. The other was offered some days later by Paterson, was called the New Jersey plan, and was substantially concurred in by the smaller States, of which New York was then reckoned one, the others

being Delaware and Maryland. The object of this plan was to preserve the state sovereignties, while sufficient power was given to the general government to enable it to provide for the common defense and general welfare. This plan appears to have received the support of all the commissioners from New Jersey. The result was a most happy compromise, by which there was formed what was properly termed by Mr. Ellsworth, a "general government, partly federal and partly national." His remarks on this question were forcible and just. He had moved that in the senate each State should have an equal vote, and said: "This will secure tranquillity, and will make it effectual; and it will meet the objections of the larger States. In taxes, they will have a proportional weight in the first branch of the legislature. If the great States refuse this plan, we shall be forever separated. If all the States are to exist, they must necessarily have an equal vote in the general government. Small communities, when associating with greater, can only be supported by an equality of votes. I have always found in my reading and experience, that in all societies the governors are ever rising into power."

After a full and earnest discussion in which the leading men from the different States participated, the question of representation, the most vital of all, was referred to a committee of one from each State, in which Paterson represented New Jersey, which agreed upon a report that was finally adopted in substance, and thus New Jersey preserved her integrity; and the plan received the sanction of all the States, a result which there is no reason to believe would have followed any plan radically different. Mr. Paterson

said emphatically and truly in the convention, "thirteen sovereign and independent States could never form one nation, and that New Jersey would not have sent delegates to any assembly that would destroy the equalities or rights of the States." Fortunately a spirit of harmony and conciliation overruled the final deliberations of the convention, and the plan adopted received the signature of thirty-eight out of the fifty-five delegates, including all that attended from New Jersey. A few of those who did not sign were in favor of it, but were necessarily absent when it was finally adopted.

The convention recommended that the constitution should be committed to State conventions, and that as soon as the same should be ratified by the requisite number, namely, nine States, Congress should take measures for the election of a president, and fix the time for commencing proceedings under it. This was complied with ; the State of New Hampshire making the ninth having ratified it, in June, 1788, Congress passed an act that electors of president and vice-president would be chosen on the first Wednesday of January, 1789, and that on the first Wednesday, the fourth of March ensuing, the new government should commence.

There was no organized opposition to the adoption of this constitution in New Jersey, it being very apparent that the Anti-federalists, as they were then called, were few and without influence. It may be remarked in passing, that for several years the term Federalist was used to designate a person favorable to the new constitution, the government it established being commonly and rightly considered as a federal government, although it would seem now that many

are disposed to overlook this important feature of the system, and to regard its national characteristics as most entitled to favor. When the two opposing political parties came to be fully developed during the administration of John Adams, his supporters called themselves Federalists, and those favorable to the election of Jefferson called themselves Republicans, the term Democrats being applied to them by their opponents, but soon adopted and still used by the party claimed still to exist under that name.

New Jersey was the third State to ratify the new constitution. The convention elected for the purpose met on the eleventh day of December, 1789, and resolved unanimously to ratify and confirm it. The members of the convention then marched in procession to the court-house, and the ratification was proclaimed to the people. Subsequently several amendments were proposed by Congress, and ten were ratified by three fourths of the States in 1791, and another, the eleventh, in 1798, produced by a decision of the supreme court, that citizens could maintain suits against the States. The twelfth was ratified in 1804. Three others, making fifteen in all, which grew out of the late rebellion, have been since ratified. Some of the provisions of these last are plainly desirable amendments, while others are much more questionable. But however that may be, it is certainly greatly to be lamented that it should have been thought necessary to secure the assent of the requisite number of States by a species of coercion now for the first time adopted. It will be a new experience in political affairs, if in the end the federal government is not sensibly weakened, instead of receiving strength from changes so introduced.

Mr. Paterson was chosen by the legislature of New Jersey, as he well deserved to be, one of the senators of the United States; Jonathan Elmer, of Bridgeton, Cumberland County, being his colleague. He first took his seat on the nineteenth day of March, 1789; but a quorum did not appear, so that the body could be organized, until the sixth day of April. He was, as a matter of course, a prominent member of that body. He was one of the tellers, to count the electoral votes, and chairman of the committee to prepare the certificates of the election, and to certify the elected officers. His most important position was as a member of the committee on the judiciary, upon whom the important duty was devolved of giving efficacy to the federal courts. No act of the first Congress was more important or more difficult to frame than the act to establish the judicial system of the United States. It required, and happily it received, the earnest attention and deliberation of men fully acquainted with the judicial systems of Great Britain and the several colonies of America, imbued with sound principles of jurisprudence, and who perfectly understood the purposes designed by the necessarily general language of the constitution; and they produced a system not indeed perfect, but the substantial principles of which still regulate this department of the government, and still command the approbation of those best qualified to understand its merits. While it properly maintains the supremacy of the laws of the United States, within their designated sphere, it carefully abstains from unnecessary interference with the judicial tribunals of the States. In a speech delivered by Mr. Paterson, advocating the law proposed, he gave

a definition of the federal government, in harmony with the sentiments he had expressed in the convention. He asks: "What are we? Of what do we consist? Of what materials compounded? We are a number of free republics, confederated together and forming a social league. United we have a head, separately we have a head, each operating on different objects. When we act in union, we move in one sphere; when we act separately we act in another, totally distinct and apart. God grant they may always remain so." Although he here spoke of the Union, as for some purposes a league, the provisions of the act he was advocating, which gives to the supreme court power to revise and annul the decisions of the highest courts of the several States, in cases involving the construction of the constitution or laws of the Union, prove that he gave no sanction to the unfounded inference that the States held a reserved right to secede from the Union at their own pleasure.

Upon the death of Governor Livingston, in 1790, Paterson was chosen by the legislature to succeed him, and resigned his commission as senator to accept the appointment of governor and chancellor of the State. In this important office he met the just expectations of the people, and was at the end of his first year reëlected without serious opposition.

While he held this appointment, he commenced a work which he continued for several years, after he left it for another, and which he finished in 1800, and for the accomplishment of which he proved to be especially qualified. In November, 1792, a law was passed, providing that his Excellency, William Paterson, should be appointed and authorized to collect

and reduce into proper form, under certain heads or titles, all the statutes of England or Great Britain, which before the Revolution were practiced, and which by the constitution extend to this State; as also all the public acts which had been passed by the legislature of this State, both before and after the Revolution, which remain in force, which said bills, as soon as the whole should be completed, he should lay before the legislature, to be by them, if approved, enacted into laws. Other provisions of the act were that he should cause the work, when completed, to be printed, and comprise in it the titles of all acts that had been passed. The design evidently was, to have a compilation similar to that previously so well prepared by Samuel Allinson, and that, besides adding all the new acts, he should embrace in it all the British acts in force that should be deemed important for the judiciary system of the State.

This important work he entered upon, departing, however, from the plan at first proposed, probably as well because his duties as judge soon interrupted his labors, and because it was more convenient to the legislature to act upon the newly prepared statutes from time to time, rather than to undertake such a work at one sitting. He continued to revise, and, so far as necessary, to remodel the British statutes proper to be reënacted, during the succeeding five or six years; and they were from time to time enacted by the legislature as a part of the statute law of the State. By an act passed in 1793, he was authorized to modify and alter the criminal law, and was directed to reduce the said criminal law into proper form under certain heads or titles, and to lay the same before the legislature, to be by them, if approved,

enacted into laws. In 1795 it was enacted that he be authorized, according to his discretion, to correct, alter, and modify such of the statutes and laws which he had not reported on, and also to draft and propose for the consideration and approbation of the legislature such bills as should appear to him conducive to the interests of the State, and to the completion of the revision and system of the laws of this State intended by the act, and that he be requested to translate the Latin and French terms as near as may be into English.

He appears to have ceased to report any new laws after 1798. In that year it was enacted that the sum of six hundred pounds be paid to him to defray the expense of printing; and another act, passed in 1799, provided that he might omit the titles of acts passed, and insert only such as he should deem necessary and proper.

Upon the completion of his revision of the British statutes, an act was passed which enacted that thereafter no statute or act of parliament of England or of Great Britain shall have force or authority within this State, or be considered as a law thereof. This section appears in the draft prepared by him (for fortunately all his drafts have been preserved and bound together), but another section was added, which he did not prepare. It enacted "that no adjudication, decision, or opinion made, had, or given in any court of law or equity in Great Britain, or any cause therein depending, nor any printed or written report or statement thereof, nor any compilation, commentary, digest, lecture, treatise, or other explanation or exposition of the common law, made, had, given, written, or composed since the fourth day of July,

1776, in Great Britain, shall be received or read in any court of law or equity of this State, as law, or evidence of the law, or elucidation or explanation thereof, any practice, opinion, or sentiment of the said courts of justice, used, entertained, or expressed to the contrary hereof notwithstanding." The intensity of the language employed in this act shows the strong repugnance to everything British which had been produced by the war. It was somewhat modified the next year, but in 1801 it was reënacted, and an additional section added, requiring that any attorney who should offer to read any such book should be deprived of his license. And so this extraordinary law remained until 1818, when, through the influence of William Griffith and Joseph Hopkinson, who were that year members of the Assembly, and of Governor Williamson, it was repealed.

An examination of the statutes Mr. Paterson compiled, to take the place of those English statutes which had been considered in force before the Revolution, will convince any lawyer of the care he took to make them complete, and to preserve, so far as circumstances would allow, the old terms, most of which had undergone judicial examination. The first act of this kind that appears, which the legislature passed into a law in November, 1794, is the act respecting amendments and jeofails (Pat. R. 126). This act embodies provisions from not less than fifteen English statutes, from the time of 14 Edward III. to George II., and still continues on our statute books unaltered. Subsequent statutes and decisions have, however, greatly extended the power of the courts to order amendments.

Most of the acts passed by the legislature from

1794 to 1798, are transcripts of English statutes, sometimes much improved, but generally retaining the original language, the construction of which had been settled by adjudications, which were thus adapted to our circumstances, and still continue an important part of our legal system. Very difficult questions, in regard to what British statutes applied to the colony, had from time to time arisen. One, and perhaps the best opinion, was that none passed after a local legislature was established in 1702, were in force here, unless the colonies were expressly named; but the courts did not strictly adhere to this principle. In some cases a local statute had declared that all English statutes concerning a certain matter should be in force in this province, as, for instance, the statutes concerning the limitations of actions passed in 1727-8 (Allinson, 72), but many important ones were left apparently to the discretion of the courts.

It may be safely said, that when he completed the work assigned him, and included all the public acts in the book entitled "Laws of the State of New Jersey, revised and published under the authority of the legislature, by William Paterson," he completed a system of statute law more perfect than that of any other State, and thus laid the foundation of a body of laws which has continued to this day to deserve the highest praise. The act to regulate the practice of courts of the law, passed in 1799 (Pat. 353), which took the place of the crude system known as Clark's Practice, shows the hand of a master. Instead of attempting a perfectly new system, he wisely took, as his principal model, the practice of the English court of king's bench, which had been always the practice of the courts of New Jersey, and introduced amend-

ments which made it more suitable to our altered circumstances, many of which were soon adopted in England. It may be doubted whether many of the modern alterations of this system have been any improvement of it. He also greatly improved the practice of the court of chancery, of which he was himself the judge, by the act respecting the court of chancery, reported soon after his appointment, but not passed into a law until June, 1799.

Upon the completion of his work, Paterson was paid the sum of twenty-five hundred dollars for his services, and two editions of the compilation were published, one in large folio, and the other a large octavo, which were used during the ensuing twenty years. In 1811 Governor Bloomfield, by authority of the legislature, compiled and published the public acts passed after Paterson's edition, with an index and the titles of the private acts. In 1819 a committee of the legislature were authorized to employ a fit person to examine, compile, and prepare all the acts in force, and to prepare and report to the next legislature such laws as he should deem advisable for consolidating into one act the same subject matter, with such corrections and amendments as he should think proper to recommend. The committee selected Judge Pennington, and he undertook the duty, so that the legislature of 1819-20, which had three sittings for the purpose, having completed the revision, authorized Samuel L. Southard and Charles Ewing, Esqrs., to superintend and direct the printing of the same. In 1821 this compilation was published as "Laws of the State of New Jersey, revised and published under the authority of the legislature," and has since been quoted by the judges as Revised Laws.

In 1838, Mr. Harrison, by authority of the legislature, published a compilation of the public laws passed since 1820, with a reference to the private laws, and a very full index. After the adoption of the new constitution in 1845, Peter D. Vroom, Henry W. Green, and Stacy G. Potts were authorized to revise the laws and reduce them into one, so as to conform them to the present constitution, and lay them before the legislature, provided that no change should be made in the phraseology or distribution of the sections that had been the subject of judicial decisions, by which the construction thereof, as established by such decisions, might be affected or impaired. Afterwards these revisors were authorized to superintend the printing of the completed work, which was published in 1847, and has been since quoted as Revised Statutes. The index, it was understood, was prepared by Mr. Potts. The Digests since published as Elmer's and Nixon's Digests, of which the fourth edition is now in use, were prepared without any previous sanction of the legislature, but have been since published by its authority.

In March, 1793, Governor Paterson was nominated by President Washington as a justice of the supreme court of the United States, an office which he held the remainder of his life. This appointment, considering the source of it, and the means of knowing his fitness for it afforded by the part he took in the proceedings of the constitutional convention, over which Washington presided, must be considered as a flattering testimony of his fitness. It seldom happens, indeed, that the executive has such an opportunity of judging for himself of the qualifications of those he appoints to important offices as happened in this

case. It has been stated that Washington, when he nominated another of the judges, supposed he was appointing an entirely different man, and was much surprised when he discovered his error.

There being at that time no such division of judicial districts as now prevails, the judges travelled from Maine to Georgia. When Paterson held the federal court at Richmond, Virginia, it happened that some foolish official who had control of the bell in the State House, refused to allow the marshal to have it rung for that court. The judge advised his officer to procure a tin horn and have it blown at the proper times, and this was done. The circumstances being made known to the governor he promptly interfered and ordered that the bell should be put at the control of the marshal. The judge, when informed of this change, sent his thanks to the governor, but said he had got along very well with his horn, and continued to have it blown as long as the court sat.

The opinions delivered by Paterson while a judge of the supreme court, so far as they have been reported, will be found in Dallas' and Cranch's Reports; and it is perhaps sufficient to say that he fully sustained his reputation. In the case of *Vanhorne's Lessee vs. Dorrance*, tried in 1795 before the United States circuit court for Pennsylvania, which occupied fifteen days, and involved the title to land in the valley of the Wyoming in Pennsylvania, claimed by the plaintiff under a title derived from Penn, and by the defendant under a title from Connecticut, fortified by a deed purporting to be from Indians, and by an act of the legislature of Pennsylvania, he delivered a very elaborate and manifestly correct charge in favor of the plaintiff. The main reliance of the counsel

for the defendant was on the act of Assembly for quieting the Connecticut claimants, which he held to be contrary to the constitution of that State, and therefore invalid. He also presided in the trial of several of the persons charged with treason in resisting the authority of the United States during what was called the Whiskey Insurrection, who were convicted, but afterwards pardoned.

It is scarcely possible to overestimate the importance of the questions that have been presented to the supreme court for its decision, from its first session to the present day; and it is a subject of great gratification that, however individuals may have dissented from particular opinions, or however frequently the judges may have differed among themselves, as from the nature of the matters submitted to their jurisdiction, so commonly more or less involving questions of policy, was inevitable, the general result has been so beneficial. A recent decision, holding one of the most important laws ever passed by Congress, so far as it attempts to authorize the payment of existing debts in anything but gold and silver to be contrary to the constitution, and therefore void, if it satisfies the sober second thought of the leading minds of the country, as there is every reason to expect, will do more to establish the credit of the nation for all future time than could have been effected in any other mode, and if, on the contrary, the lapse of time and of events shall prove it to be erroneous, there will be found no insuperable difficulty in establishing a different doctrine by a direct amendment of the constitution, or by the reversal of an improvident opinion.¹

¹ Since this paragraph was penned, two new judges, known when appointed to be committed on the subject, have hastened to unite with the prior

In the case of *Penhallow vs. Doane's Administrators*, (Dallas R. 80), which grew out of the proceedings in a court of admiralty of the State of New Hampshire, and upon an appeal to a court established by Congress during the confederation, Judge Paterson delivered an able opinion, a part of which I quote, because of its bearing upon questions respecting the nature of our complex government, which have recently occasioned so much difficulty :—

“ Much has been said respecting the powers of Congress. On this part of the subject, the counsel on both sides displayed great ingenuity and erudition, and that too in a style of eloquence equal to the magnitude of the question. The powers of Congress during the war were revolutionary in their nature, arising out of events adequate to every national emergency, and coextensive with the object obtained. Congress was the general, supreme, and controlling council of the nation ; the centre of union, the centre of force, and the sun of the political system. To determine what their powers were, we must inquire what powers they exercised. Congress raised armies, fitted out a navy, and prescribed rules for their government. Congress conducted all military operations, both by land and sea. Congress emitted bills of credit, and sent ambassadors and made treaties. Congress commissioned privateers to cruise against the enemy ; directed what vessels should be liable to capture, and prescribed rules for the distribution of prizes. These high acts of sovereignty were submitted to, acquiesced in, and approved by the people of America. In Congress were vested, because by Congress were exercised, with the approbation of the people, the rights and powers of war and peace. In every government, whether it consists of many states or of a few ; or whether it be of a federal or consolidated nature, there must be a supreme power or will : the rights of war and peace are component parts of this supremacy, and incidental thereto is the question of prize. The question of prize grows out of the nature of the thing. If it be asked, In whom, during our Revolutionary War, was lodged, and by whom was exercised, this

minority of the court in overruling a deliberate opinion ; and have thus given us a painful proof, that however useful the court may be in restraining the un-

constitutional legislation of state legislatures, it cannot be relied on to interfere with the action of Congress.

supreme authority ? no one will hesitate to answer, It was lodged in, and exercised by Congress ; it was there or nowhere ; the States individually did not, and with safety could not exercise it. Disastrous would have been the issue of the contest, if the States separately had exercised the power of war. For in such case, there would have been as many supreme wills as there were States ; and as many wars as there were wills. Happily, however, for America, this was not the case ; there was but one war, and one sovereign will to conduct it."

Perhaps the most celebrated of the cases tried before him, was the indictment against Matthew Lyon, for a violation of the sedition law, passed by Congress in 1798. He maintained the constitutionality of this act, and sentenced the defendant to pay a fine of one thousand dollars, which was, after the lapse of forty years, refunded by virtue of a special law for that purpose. The supreme court sustained his decision ; but it was not long before public opinion compelled the repeal of this and the alien law, which are not likely to be revived. During the administration of Mr. Adams, when political feeling had become very intense, an indictment, drawn by Mr. Lucius H. Stockton, the attorney of the United States for New Jersey, was returned a true bill, against an individual who, during the excitement of a political contest, made a foolish and very vulgar remark about the president, respecting a salute fired in his honor, which, when it came to be published, was so ridiculous that the circumstance helped very much to make the law odious.

His friends were much dissatisfied with President Adams, that upon the resignation of Chief Justice Ellsworth, he did not select Paterson to take his place, his declining to do so being attributed to his having conceived a prejudice against him ; and this, considering the well-known disposition of Mr. Adams, may

have been in part the reason. But it may be that, as has usually been the practice in England, he thought it best to avoid any danger of distrust and jealousy among the associate judges by taking the chief justice from the fittest person outside their number; and it must be remembered that whatever may have been the controlling motive, the man he selected for the position was John Marshall.

The last of Judge Paterson's official acts and of his public life, was as the presiding justice, with District Judge Talmadge, in the circuit court of the United States, at New York, April, 1806, on the trials of indictments against Samuel G. Ogden and William S. Smith for violating our neutrality acts, by aiding Miranda in his expedition to wrest some of the South American States from the dominion of Spain. They were state trials, which excited great attention, and in which the public, as has been usual in such cases, sympathized with the defendants. The defendants had employed the most eminent counsel at the New York bar. An attempt was made to postpone the trials on account of the absence of several members of Jefferson's cabinet, who, it was alleged, were important witnesses, wanted to prove that the administration was aware of and connived at the design, and against whom attachments were moved for, because they had not obeyed the subpoenas served on them. The judges agreed in refusing postponement, Paterson stating that at first he had inclined to agree to the request on account of his own infirm health, but he was satisfied he should not be sufficiently recovered in a reasonable time, so that no benefit would result to the defendants by delay. An elaborate opinion was delivered by Paterson, holding that the facts it

was alleged could be proved would be no justification of the criminal acts that were charged. Upon the question of attachments, he stated the judges disagreed ; and that when this happens, they do not assign any reasons in favor of their respective opinions, but merely state the point of disagreement, that either party may carry it into the supreme court for ultimate decision. These proceedings consumed several days, the decision to proceed with the trial being made in July. Judge Paterson then left the bench, and the trials proceeded before the district judge, ending in the acquittal of both defendants.

The health of Judge Paterson continued from this time to decline, and he died, at the residence of his daughter in Albany, who was the wife of Stephen Van Rensselaer "the Patroon," on the 9th of September, 1806, in the sixty-second year of his age. It has been said of him that, "although small in stature, he was every inch a judge." All that remains of him serves to show that he was a man of great ability, and entirely worthy of the important stations in the state and federal governments he was called on to fill. From 1787 to 1802, he was one of the trustees of Princeton College. He left two children, a son and daughter of his first wife ; his second wife, whom he married in New Brunswick, left no issue. The son, who was a lawyer, died in 1833 ; and his son, also a lawyer, survived him. Mr. Van Rensselaer left several children, one of them Rev. Cortlandt Van Rensselaer, who died in 1860, greatly regretted, resided in and was well known in New Jersey.

Judge Paterson, though possessing an intellect and ability of high order, was not an orator in the ordinary acceptation of the term. He was a diligent and

laborious student, and, as a lawyer, prepared his cases with much examination. Indeed, it is understood that he seldom addressed a court or jury without copious notes, and often from a written argument, a practice, however, by no means peculiar to him. He himself states, in a letter to President Laurens, that "he was not one of those ready men, who can at the bar take up a long and intricate cause, and manage it with ease and address." He evidently distrusted his own ability, though it is certain that industry and application, however persevering of themselves, could never obtain the reputation or eminence he obtained in after life.

In his religious opinions, though attached to the rights and forms of the Presbyterian Church, in which he was bred, he was liberal and charitable. His pastor spoke of him as "one who read and studied much on the subject of religion, and who was familiar with its doctrines, both natural and revealed. For the Scriptures he had the highest reverence, and was liberal in contributing to the maintenance of the ministry." Although he did not make a public profession of his faith during his active life, from doubts as to his preparation and fitness, doubts perhaps produced by the preaching not uncommon in his day, still he did not neglect the outward duties prescribed by the authorities of his church, and for some years before his death, to use his own words, was more than ordinarily impressed with religious subjects and meditations. In his last illness, he contemplated, with regret, this omission to make a public profession of his faith in Christ; and did not bid farewell to family and friends until he had partaken of the solemn ordinance of communion, and urged this duty upon those connected with him by the nearest and dear-

est ties; and in doing this he was no doubt much strengthened by the example of his pious son-in-law, at whose house he died.

RICHARD HOWELL, governor from 1793 to 1801, was the son of Ebenezer Howell, whose parents came to this country from Wales in 1729, and settled in Newark, Newcastle County, Delaware. Richard was one of eleven children, and with his twin brother Lewis was born October 25th, 1754. They were educated at Newcastle, in a school where they were taught gymnastic exercises, such as leaping, boxing, etc. A string being stretched, the rule was, that the one who first jumped over it must box with any one who chose to fight. Lewis would jump over at once; but was too small and weak to be a match for the others. Richard would at once step up and fight his battles, rarely, if ever, finding his match at this sport. When about fifteen years old, their father came over to New Jersey, and settled in Cumberland County, a few miles west of Bridgeton, where he resided until his death. The two boys remained in Delaware until their education was completed. They came over to this State in 1774, or perhaps earlier. Lewis became a student of medicine with Dr. Jonathan Elmer, and Richard studied law.

Both the brothers were of the party who, in November, 1774, disguised themselves as Indians, broke into a store-house at Greenwich, a few miles from their father's residence, took out the boxes of a pretty considerable cargo of tea stored there, imported in a brig called the *Greyhound*, and burned them. They, with others engaged in this matter, were sued by the owners, but the case was never brought to trial. At the May term of the Cumberland court of oyer

and terminer, Chief Justice Frederick Smyth, who held the court there as a royal judge for the last time, gave a very pointed charge to the grand jury respecting this affair; and when they returned into court without a true bill, sent them back to reconsider the case; but Jonathan Elmer, the Whig sheriff, had taken very good care to summon a Whig grand jury, of which one of his brothers was foreman, and they returned empty-handed.

Early in 1775, Richard was appointed a subaltern officer in a company of light-infantry, and in December, when but little over twenty-one years, he was commissioned as captain of the second regiment of the New Jersey line of Continental troops, commanded by Colonel William Maxwell. A company was recruited in Cumberland and Salem under his command, respecting which Ebenezer Elmer records in a journal of the date "*Die Solis 10 Decr., 1775.*" Went to meeting at Greenwich. Mr. Hollinshead preached. Capt. Howell's soldiers there; came and went away in form. *Die Mercurii 13 mo.* Clear and cold; the soldiers went on board the Greenwich packet at evening to sail for Burlington. *Die Jovis 14 mo.* Cloudy day; the soldiers, captain and all, went in the dead of night off, on foot, to get clear of their creditors; their going aboard of the vessel turned out only a sham."

The regiment of Continental troops in which he was a captain was ordered to Canada. A letter, addressed to his brother Lewis, has been preserved, which gives some account of his proceedings and his feelings. It is as follows:—

"MT. INDEPENDENCE, 26 September, 1776.

"I know by Harper, of the Fourth Pennsylvania battalion, that you have received letters from me, and though at New York you

never wrote to me, notwithstanding you must have been assured that I was at Ticonderoga. I received one letter from my father, and one from George Evans, all the friends I have that ever recollect I was yet in being, all to whom I had written this month past. It seems as if you really submitted to the supposition that I was lost in Canada, and thought it not worth while to make inquiry.

“As to the affairs of Canada, you have heard them I doubt not; if you have not, I cannot tell you, only I had the honor to fire the first gun on the plains of Abram, before the retreat—an unhappy affair. We know what it is to flee for miles before an enemy of three to one, furnished with everything; while we were reduced sometimes to one quart of meal, bran and all, a man.

“Before Quebec we had not at any time that day two hundred men to attack the enemy, at least seven hundred strong. Nothing could be done; all that was done I did with twenty men, who gave them a close fire, and it was said by M’Clean that he lost seven men that day, and I gave the only fire that was given. The Trois River affair I was not at, having been taken sick; but every other difficulty of Canada I shared. I have been sick twice only, which was extraordinary, remembering the difficulties. Ticonderoga has been a scene of bad usage to our regiment. The colonel, one of the most patient and brave men in our regiment, by his plain, honest resentment of an injurious aspersion from General Gates, has laid himself and us under his displeasure. But this we cheerfully submit to, as we, as well as all who have seen Colonel Maxwell’s services in Canada, know him to deserve General Gates’ highest complaisance, not his displeasure. I have been, by some extraordinary means, advanced to the rank of major of brigade. I would not, nevertheless, give up my company in a standing regiment for such employment. I will return with the regiment if possible, and hope you will not (and to you only I can, or ever have mentioned such a thing) let an opportunity pass to procure me a station in the future campaign, equal to my present rank. I have done nothing extraordinary to merit it, for I have had no opportunity; but have done more than any other when I have been where anything could be done. The nature of the service I am acquainted with pretty well, as nothing can be done in camp where I am without making myself acquainted with it.”

I do not know in what capacity Lewis was serving in the army at this time. In the succeeding winter

he was appointed surgeon of the second Jersey regiment, as then arranged under the command of Colonel Shrieve, of which Richard became the major; my father, Ebenezer Elmer, being the surgeon's mate, afterwards on the death of Lewis Howell promoted to be surgeon. At New York our army had been unsuccessful. General Washington, in a letter to his brother of November 19, 1776, says: "You can form an idea of the perplexity of my situation. No man I believe ever had a greater choice of difficulties, and less means to extricate himself from them." Nevertheless Carleton, after occupying Crown Point, returned to Canada without attempting anything further. The forces raised for this northern campaign had been enlisted to serve a year, and some of them agreed to remain six months longer, but not the Jersey troops.

Colonel Maxwell wrote to the governor and council of New Jersey as follows:—

"POINT INDEPENDENCE, October, 18, 1776.

"GENTLEMEN,—Agreeably to your instructions, sent by Hon. John Cleve Symmes and Tunis Dey, I have furnished them with the necessary returns. Clothing I did not think worthy of mentioning, as they are chiefly worn out. I have likewise given them a list of those officers that choose to continue in the service during the war. I am sorry to inform you that there is not one man willing at present (nor do I think they will while here) to engage to stay at this place during the winter. I have laid before them every proposal the Continental Congress has made them, the great care your honorable house is taking to provide them warm clothing, and the glorious cause we are engaged in, but all to no purpose. They generally say they will engage as soon as they go home, and I believe they will. This being the first year of their service, and as it has been so severe a one, and now a contract offered that they know not when it will end, it may be easily conceived they will require a little time to deliberate.

"I have the pleasure to inform you that I have in general as good a set of officers as there is in any battalion in the Continental service, and of course they will make good soldiers, what we have still remaining in health, I believe there is none better."

This testimony is the more valuable from the fact that many of the officers fresh appointed, as is generally the case in all wars, were incompetent. Washington, in his letter to his brother, before quoted, says: "The different States, without regard to the qualifications of an officer, quarreling about the appointments, and nominating such as are not fit to be boot-blacks, from the local attachments of this or that member of assembly."

Upon the new organization of the New Jersey regiments, Maxwell was promoted to be brigadier-general, and Howell to be major. Maxwell's brigade took an active part in the battle of the Brandywine, at which both of the brothers were present. He sustained a loss of forty killed and wounded, Colonel Shrieve being badly wounded. Lewis was taken prisoner, but escaped, and in doing so drew upon himself the fire of a platoon, several balls passing through his cap and coat without touching him.

On the day of the battle of Monmouth, June, 1778, Lewis died from an attack of fever, at a small tavern not far from the place of the engagement. He sent word on the previous day to his brother, the major, that he wished to see him, and to come at once, if he expected to see him alive. This induced him to ask permission of Maxwell to do so. "Yes, yes," said the old Scotchman, "go and see your brother; it happens very well for you; we will have a hard day's fight to-morrow." This taunt prevented his going; he was a thorough soldier; so he stayed and fought

out the battle. When he went the next day he found his brother dead. This incident is stated on the authority of a nephew, who had heard it from his father.

He did not remain much longer in the army ; but was licensed as an attorney in April, 1779, and returned to Cumberland, where he appears to have lived several years, it being stated that three of his children were born in that county in 1780, 1782, and 1783. He married a daughter of Joseph Burr, of Burlington County, in November, 1779. His name appears frequently during these years, as an attorney on the records of Cumberland and Salem.

A letter from one of his brothers, written to one of his sons, and dated May 24, 1837, says : —

“ His resignation was occasioned by a special request from General Washington, who immediately ordered him to transact certain duties of a private nature, which he could not perform while holding a military commission from Congress. The nature of that business, I am bound under the strongest obligation not to reveal, even to his own children. I do not mention the last case, as supposing it will have any weight respecting your claim on the State, but merely that you may know his reasons for resigning his commission after serving through the most trying scenes of the war. The nature of this private business created strong suspicions of his patriotism in the minds of many who were strangers to his authority for so doing ; so much so, that he was arrested in his father’s house for high treason, high misdemeanor, or whatever legal term the law uses in such cases, before the supreme court of New Jersey, Judge Bearly then presiding. He was then obliged to produce his commission, and the judge on the sight thereof, not only discharged him from arrest, but ordered every proceeding in the case to be erased from the minutes of the court. Thus you see, my dear sir, though your father’s resignation may operate against your claim, it has in no shape tarnished his military character. He was recognized by his companions as one of their most shining characters, and if I have not been wrongly informed, died a member of the Cincinnati.”

This reticence of his brother, at a period so long after the transaction referred to, when it would seem impossible that the truth could do any harm, is somewhat characteristic of the respectable gentleman who writes the letter, who was well known to me. It is certain from the after career of Howell, that his character did not suffer by his resignation. The private business in which he was employed by General Washington, in all probability, was the being engaged in obtaining intelligence of the proceedings of the British commanders at New York and elsewhere, to effect which it is well known that he was obliged to resort to many contrivances. Many years ago, I often heard my father and others who had served in the Revolutionary army, jokingly remind Dr. Shute, a highly respectable physician of Bridge-ton, of a scrape into which he got, arising from these contrivances in regard to the spies relied upon in that delicate and dangerous service. A peddler who was engaged in bringing clothes, etc., from out of the British lines and selling them, contrary to law, and who was required to be arrested by our officers wherever found, having been captured and confined in the guard-house, he was put in charge of Shute, then quite young, a subaltern officer, who had been but a short time in the service. Late in the evening a woman of large dimensions came with an order from General Dayton, to be permitted to see her husband, the peddler, and she was of course admitted. After a short time Shute was alarmed by her cries of distress, and informed that she must have assistance. Before he had made up his mind what to do, however, to his great relief he was informed she was better, and ready to depart, which he was glad to permit her to

do. In the morning it appeared the peddler spy had escaped, and his pretended wife had remained. Lieutenant Shute was put under arrest, and terribly frightened; but after a few days, in consideration of his youth and inexperience, was let off with a private reprimand. In process of time, it became well known that General Dayton, who was much trusted by Washington, had purposely caused a young officer to be detailed to command the guard, and had procured the woman to personate the wife of his spy, that he might thus enable him to escape, without his secret employment becoming known.

In September, 1788, Mr. Howell was elected clerk of the supreme court, having a short time before taken up his residence in Trenton. He took a leading part, Governor Livingston being absent, in getting up the proceedings of the citizens of Trenton on the 21st of April, 1789, upon "receiving his excellency George Washington, President of the United States, on his route to the seat of federal government," a very good account of which was published in the "Columbian Magazine," published at Philadelphia, with an engraving giving a well executed view of the triumphal arch erected at the bridge over the Assanpink, the same place at which the army under Washington's command had repulsed the enemy.

Upon the appointment of Paterson as judge, in 1793, Richard Howell was elected by the joint meeting, governor, receiving twenty-five votes, the remaining twenty-three being divided between Frelinghuyzen and Rutherford, and continued to be reëlected yearly, generally unanimously, until 1801, when the Republican party having obtained the ascendancy in the State, he being ranked among the Federalists was

succeeded by Joseph Bloomfield. While he held the office of governor, in the year 1794, President Washington having called out a large body of the militia to suppress what was called the Whiskey Insurrection, in the western part of Pennsylvania, he took command of those sent from New Jersey, and was by General Washington assigned the command of the right wing of the army, his successor in the office of governor having the command under him as a brigadier-general. Happily the insurgents attempted no armed resistance, and the object of vindicating the law was effected without bloodshed.

The following is an extract from one of his orders, issued at Laurel Hill, October 27, 1794, as recorded by Major Gould, in his journal of the expedition : —

“ The troops of New Jersey are scandalized by the petty pilferings of a few who dishonor their fathers and their State, and every individual suffers for the faults of a few. All are hereby instructed to suppress the ignominious practice. The orders of General Lee, including the letter of the President, and those issued since the march to Bedford, which respect the detachment, are to be distinctly read to the troops this evening, and obedience unfeigned by the captains, on whom depends the conduct of the men.”

These troops were dismissed by an order of General Washington, dated at Pittsburg, November 17, 1794, in which he directs that on the next Thursday, at the hour of eight a. m., the New Jersey line should move under the command of his excellency Governor Howell, who will be pleased to pursue from Bedford such routes as he may find most convenient.

Governor Howell, although not a poet of the highest order, was accustomed to write songs and other fugitive pieces, not without merit. The following lines were composed to be sung by the soldiers on this occasion, and are said to have been at the time very popular : —

“ To arms, once more our hero cries,
 Sedition lives and order dies ;
 To peace and ease then bid adieu,
 And dash to the mountains, Jersey Blue.

“ CHORUS.

“ Dash to the mountains, Jersey Blue,
 Jersey Blue, Jersey Blue,
 And dash to the mountains, Jersey Blue.

“ Since proud ambition rears its head,
 And murders rage, and discords spread ;
 To save from spoil the virtuous few,
 Dash over the mountains, Jersey Blue.

 Dash to the mountains, Jersey Blue, etc.

“ Roused at the call, with magic sound
 The drums and trumpets circle round,
 As soon as the corps their route pursue ;
 So dash to the mountains, Jersey Blue.

 Dash to the mountains Jersey Blue, etc.

“ Unstained with crime, unused to fear,
 In deep array our youths appear ;
 And fly to crush the rebel crew,
 Or die in the mountains, Jersey Blue.

 Dash to the mountains, Jersey Blue, etc.

“ The tears bedew the maidens’ cheeks,
 And storms hang round the mountains bleak ;
 'Tis glory calls, to love adieu,
 Then dash to the mountains, Jersey Blue.

 Dash to the mountains, Jersey Blue, etc.

“ Should foul misrule and party rage
 With law and liberty engage,
 Push home your steel, you'll soon review
 Your native plains, brave Jersey Blue.

 Dash to the mountains, Jersey Blue, etc.”

During his time, the house on what was then called Market, now State Street, in Trenton, was purchased for the permanent residence of the governor, and

was occupied by Governor Howell. But little is known of his situation after he ceased to be governor; only that he returned to the practice of the law. None of his opinions as chancellor, have been published; and such is the state of the old chancery rolls that it would require more patient labor than it is worth to undertake to decipher them. The business of that court, in his day, compared with the present, was unimportant, although it occasionally happened that a case of some interest was brought before him.

The following lines are said to have been inscribed under a portrait of him, by some unknown friend, and probably express his general character: —

“ Howell for social virtues famed afar,
Shone in the ranks and urged the dreadful war ;
His graceful form expressed a noble mind,
The soul of honor, friend of human kind.”

He was undoubtedly a man of free and easy address, very popular, although somewhat affected by his army habits. He was very fond of the athletic exercises common in his day,—now disused, it is to be feared, to the physical injury of the present race of Americans,—such as pitching quoits and playing ball; and even while governor could often be found in the alley then generally attached to the inns. He was also fond of riding a good horse, and used to tell with some glee, that once, while riding from Bordentown to Trenton, a black fellow came out of the gate of William Pearson's farm, adjoining the road, mounted on a good horse, and seeing the governor, addressed him,—

“ Massa rides a nice horse, but I guess Massa Pearson's bay mare can outtrot him.”

“ If you think so, Dick, let's try,” replied the governor.

“Yes, massa ; whichever gets first to the Bloomsbury road shall win a dollar.”

This was agreed to, and they started ; but before they got to the designated goal, the governor, finding he was much ahead, looked around and saw that Dick had turned tail, and was making the best of his way back to Massa Pearson’s. The governor never got his dollar.

He died at his residence, near Trenton, May 5, 1803, at the early age of forty-nine. He had nine children, of whom some died in infancy. Richard, born in 1794, was in 1812 a lieutenant in the fifteenth regiment of infantry, and was aid to General Pike when he was killed at the blowing up of Fort George, in Canada. William was lieutenant in the marine corps, and Franklin was a lieutenant in the navy, and was killed on board the frigate *President*. Mrs. Jefferson Davis, whose husband was president of the “Confederate States,” is a granddaughter.

CHAPTER V.

GOVERNORS I HAVE KNOWN.

JOSEPH BLOOMFIELD. AARON OGDEN.

JOSEPH BLOOMFIELD was governor and chancellor from 1801 to 1812. I first visited Trenton in the year 1804. The bridge at South Trenton had been just commenced; the stage crossed the Delaware just below where the bridge now is, in a scow. I was a boy of about eleven years, and went with my father, an old companion in arms of the governor, and his life-time friend. He lived then in the government house, situate on what was then called Market Street, now State Street, the house having since been altered and occupied as a hotel. He lived in very handsome style, suitable, as I thought, for a governor; had a large, well maintained, productive garden, with a brick office near the house standing where Chancery Lane now is, and kept a gardener, coachman, and footman. We were received as acceptable guests, treated with much attention by him and Mrs. Bloomfield, who had no children of their own. I was diverted with a magic lantern, the first I had seen. The governor wore his hair powdered and a cue, according to the fashion of an earlier day, then beginning to be discarded, and was a good-looking man, dignified and courteous in his manners. The visit has always been remembered, as one of the pleasant events of my life.

He was the son of Dr. Moses Bloomfield, and was born at Woodbridge, Middlesex County, in the year 1755. While a youth, he was sent to a classical school, taught by the Rev. Enoch Green, at Deerfield, Cumberland County. His father was an influential member of the legislature and of the Provincial Congress during the Revolution; and married for his second wife, Mrs. Ward, a distant relative of mine, the widow of Dr. Ward of Cumberland, who died in 1772. After he left the school, the son became a student of law with Cortlandt Skinner, attorney-general of the Province of New Jersey, a man of high standing and influence as a lawyer and as a member of the Assembly and council. Attorney-generals of that day were very independent of popular favor, and were accustomed to sell *nolle prosequi* for petty offenses, the usual price being, as I was told by a person who said he purchased one, a half-joe, a gold coin then current, of the value of eight dollars. During the early stages of the struggle for independence, Mr. Skinner, like many others who in the end became Royalists, was strongly opposed to the encroachments of the British ministry. But he soon changed his course; and in October, 1775, wrote to Governor Boone, who gave up the place of governor in New Jersey for a like situation in South Carolina, in the following strain:—

“ Taxes and a restraint on the West India trade are most likely to force the colonists into manufactures, and put independence into their heads. They are on the high road to it now; and though 'tis true that they have not strength to effect it, but must submit, yet 'tis laying the foundation for great trouble and expense to Britain, in keeping that by force which she might easily do without, and alienating a people which she might make her greatest prop and security.”

The attorney-general continued to occupy his position during the year 1775, although the object of continued distrust and suspicion on the part of the determined Whigs; but in January, 1776, a letter of his to his brother, a lieutenant-colonel in England, was discovered, which induced the Continental Congress to order that it should be sent to the committee of safety of New Jersey, and that orders be sent to Lord Stirling, to take with him a sufficient force and immediately apprehend and keep in safe custody the said Cortlandt Skinner of Amboy until further orders. The said Cortlandt Skinner, however, had taken care to leave the colony, and take refuge on board a man-of-war, and all the Provincial Congress could do was to direct their treasurer not to make any further payment of salary to him. He does not appear to have made any attempt to act as attorney-general after this. He no doubt confidently expected to resume the position before many years, but the opportunity to do so never came.

He took a commission as brigadier-general from General Howe, with authority to raise five battalions from among the disaffected of New Jersey, of which he only succeeded in obtaining five hundred and seventeen. He did all he could to aid the royal cause, and after the Revolution went to England with his family, and received from the government compensation for his forfeited estate, and half-pay for life. He died at Bristol, in 1799, at the age of seventy-one.

Bloomfield had as a fellow-student, Andrew Bell, of Perth Amboy, who, like his preceptor, embraced the royal cause, although he did not afterwards leave the country. In 1775, he was licensed as an attorney, and soon took up his residence, and commenced

the practice of law in Bridgeton ; but unlike his preceptor and fellow-student, he was a decided Whig, and in February, 1776, was commissioned a captain in the third New Jersey regiment, commanded by Colonel Elias Dayton. My father was a subaltern officer of this company. A company of sixty-five men were recruited in the county to serve one year, and on the twenty-sixth day of March they took up their line of march to join the northern army in Canada. A full journal was kept by Lieutenant Elmer, which has been published in the second volume of the proceedings of the Historical Society. He records : "Marched up to where Daniel Stretch abused us (at Whig Lane, about twelve miles from Bridgeton), for which we gave him a new coat of tar and feathers, made him give three hearty cheers for Congress, and beg our pardon." On the third of April they reached Elizabethtown, and on the sixteenth were at Amboy, where they remained until the eighteenth of that month.

It is remarked by Mr. Whitehead, at page 106 of his exceedingly interesting work, "Contributions to the Early History of Perth Amboy," that the "first duty Captain Bloomfield undertook, or upon which he was sent, is believed to have been the arrest of his former friend and adviser, Mr. Skinner. It is to be hoped that the duty was delegated, not assumed. We will not venture to analyze the feelings with which the house in which he had ever found a home was carefully searched, in the hope of securing the convicted loyalist. Fortunately its mistress was absent ; but it was, under any circumstances, a trial of no ordinary character to have one who had dwelt beneath their roof, and been warmly cherished, thus

diligently seeking to entrap the object of her highest regard, particularly as there was no reason for presuming Mr. Skinner to be in Amboy."

There is no doubt that the captain was acting in this matter under precise orders to search for, and if possible secure Skinner, as it appears he saw Governor Livingston on his route; but even if it were otherwise, and he is to be considered as a volunteer in the attempt to arrest his old master, I do not see that he was deserving of reproach. He had embarked in a cause that put his own neck in danger of a halter, which those Skinner was serving would not have hesitated to use, had their success been such as would have made it safe; and it was necessary to prevent him, if possible, from using his influence to increase the number of disaffected persons, whom he engaged in enlisting to aid in cutting the throats of his fellow-citizens. It is not alleged that the duty of searching his house was improperly exercised; and there is no reason to suppose that any violence to Skinner was intended. All that was necessary, or that was proposed, was to deal with him as Franklin had been dealt with; that is, to put him as far as possible out the way of doing harm.

The company embarked on board sloops at New York on the third day of May, and reached Albany at evening, May 6th, "wet and weary." On the 5th they were to be in readiness to march to Quebec; but the news of the retreat from Quebec caused a change; on the 20th a part of the regiment were directed to march up the Mohawk, "to subdue Johnston and his brood of Tories." In the evening of May 19th, Captain Bloomfield returned to Albany, with Lady Johnston a prisoner, bringing news that

the regiment was to be stationed at or near Johnston Hall to keep back the Indians.

A guard was set over the hall and maintained for some time. Some of the officers and men contrived, however, to steal many of the books and other articles, for which they were tried by court-martial, and punished ; one of the officers was cashiered. Most of the regiment went to German Flats and Fort Stan-wix (near Rome). July 14th, the journal of Lieutenant Elmer records : —

“ Captain Bloomfield returned with a whole bag full of news. He had received a letter from his father, in which was inclosed a Declaration of the Continental Congress, passed the 4th day of July, declaring the colonies free independent States, which, may God prosper and protect. Monday, 15th, about 12 o’clock, an assembly was beat for the men to parade, in order to receive a treat and drink the States’ health. When having made a barrel of grog, the Declaration was read, and the following toast given by Parson Caldwell : ‘ Harmony, virtue, honor, and all prosperity to the free and independent States of America ; wise legislators, brave and victorious armies, both by sea and land, to the American States.’ When three hearty cheers were given, and the grog flew round amain.”

Shortly after this General Schuyler arrived, and the journal records : —

“ Captain Bloomfield had four men constantly guarding the general, day and night.” (The inexperienced journalist seems to have thought this a very unnecessary parade.) “ Prayers were omitted this evening, as the parson was attending the general, and Captain B. was constantly flirting about after him. After tattoo the general and parson and others who lodge with them were taken up, being out of their lodging taking a walk. The sergeant of the guard being called, let them go in, with a charge not to be out so late for the future.”

Under the date of August 14, the journal contains an entry stating the journalist’s opinion of the officers, a part of which is as follows : “ Captain

Bloomfield, active, unsteady, fond of show, and a great admirer of his own abilities; quick passions, but easily pacified." This was no doubt in the main, a correct statement of the captain's weak points, as recorded in a private journal, not intended for publication. The journalist was older than his superior officer, and it is very evident, from several statements he makes, that he felt a little sore at being compelled to occupy an inferior position. His father had died when he was quite young, and his education had been very much neglected, so much so, that he states in a short autobiography, that he had but one quarter's schooling, until past the age of twenty, when he placed himself under tuition, to learn the practical branches of a seafaring life, but was induced by his brothers to enter upon the study of medicine, with his brother, Dr. Jonathan Elmer, ten years older than himself, and a thoroughly educated man. He was a resolute man, devoid of fear, but not otherwise well qualified to command as an officer, and was so sensible of this that at the close of the year for which he entered, he declined remaining in the line; but took a position as a surgeon, in which he continued to the end of the war. Being a man of strong intellect and a diligent student, he became an excellent surgeon, well informed in politics, and an active influential man to the end of his life. Notwithstanding the appearances of dissatisfaction in the journal, Joseph Bloomfield and Ebenezer Elmer were personal and political friends during their joint lives.

Early in November the troops marched to Ticonderoga; here Captain Bloomfield was appointed judge advocate of the Northern Army. At this post

there was much exposure and sickness, the captain being for some time ill. On the 25th of December he left for home. Shortly after, he was promoted to be major of the third regiment. It is stated in the register of the Cincinnati of New Jersey, that he was wounded, but upon what occasion, I have not been able to ascertain. His regiment was at the battle of the Brandywine, and actively engaged there, and also at Monmouth. Sometime in 1778 he appears to have resigned his commission in the army. In the fall of that year he was chosen clerk of the Assembly, and he was for several years register of the court of admiralty. Upon the organization of the Society of Cincinnati in 1783 he was enrolled as one of the members; in 1794 he was elected the vice-president, and in 1808 the president.

In 1783, upon the resignation of William Paterson, he was elected by the joint meeting attorney-general of the State; was reelected in 1788, and resigned in 1792, being then succeeded by Aaron D. Woodruff. During the time he held this office, courts of oyer and terminer were held in the different counties, usually twice a year, but in some only once, and by virtue of a special commission issued by the governor, which designated the judges who were to hold it, commonly including two justices of the supreme court; and these courts had their own clerks, who kept records of their proceedings, many of which have not been preserved. The attorney-general attended such of these courts and the courts of quarter sessions as he conveniently could, and having only a nominal salary of thirty pounds a year, derived his support from the fees allowed, which were twenty-five shillings for a conviction in a capi-

tal case, and fifteen shillings in other cases, and one fourth more for services in king's cases, than other attorneys for like services. As costs were then allowed to be taxed for motions, etc., when there was an acquittal, as well as in cases of conviction, the remuneration of a prosecuting attorney in criminal cases probably averaged quite as much then as now, allowing for the difference in the value of money. For the courts which the attorney-general did not attend in person, he was accustomed to appoint deputies.

Soon after his retirement from the army, Bloomfield married Miss Mary McIlvaine, a daughter of Dr. William McIlvaine of Burlington, and sister (I believe) of Joseph McIlvaine, Esq. He settled in that place, and made it his home when not absent in the public service. During his life he was much respected as a man of integrity, and great courtesy of manners, "benevolent in little things," as it is termed most happily by Chesterfield. He was mayor of the city several years, and lived in the style of a gentleman of fortune. In 1783 he was appointed register of the court of admiralty, established by the State. In 1793 he was chosen one of the trustees of Princeton College, a place which he resigned when he became *ex-officio* president of the board as governor; and in 1819 he was chosen anew, holding the office until his decease. He was a general of militia, and in 1794 took the field as commander of a brigade of militia, called into service to quell the Whiskey Insurrection in Pennsylvania, proceeding with the troops into the immediate neighborhood of Pittsburgh, and accomplishing the object intended without bloodshed. In 1792 he was appointed by the legislature one of the presidential electors, and gave

his vote with his associates for Washington and Adams. In 1796 he was not appointed an elector, perhaps because thus early he had shown that he was not favorable to the election of Adams, the Federal candidate.

During his residence in Burlington he was an active member and president of the "New Jersey Society for the Abolition of Slavery." This society was very different from those abolition societies which have sprung up in modern times, and may be truly stated to have been fanatical in their character; whose benevolence has been justly characterized as "a benevolence of hate," who for the attainment of their object did not hesitate to revile the Christian Church, and, to use their own language, "spit upon the constitution" that protected them; and who were permitted by the supreme ruler of the universe to accomplish a good end by unholy means. And this I say to record my protest against one of the most common errors into which fallible men are prone to fall, that the end sanctifies the means. The societies of 1780 took no measures to aid the slaves in escaping from their masters, but confined themselves to protecting them from abuse, and to aiding their manumission by legal proceedings. Writs of habeas corpus were sued out, and many negroes claimed as slaves were declared by the supreme court of the State to be free; indeed, it appears by a pamphlet published by the society, that it was held that a mere promise of the master to free his slave, was sufficient. These decisions probably produced the act of 1798, regulating slavery, and prescribing a formal mode of manumission, which remained in force until the act of 1804 altered it in part, and provided for the

gradual abolition of slavery. In 1794, several of the societies met at Philadelphia, Bloomfield being one of the representatives of the Jersey society, and adopted resolutions and addresses strongly objecting to the continuance of slavery, and advocating its speedy abolition.

Whatever may have been his previous leaning, General Bloomfield, in 1801, took a decided stand on the side of the Republicans, as a supporter of Mr. Jefferson, and presided at a meeting of that party, held at a place then called Slabtown, now Jacksonville, near Mount Holly, and afterwards when elected governor, was called by his violent opponents, who accused him of being a deserter, the "Slabtown governor." The charge of desertion was no more applicable to him than to a majority of his political friends. They had great reverence for the virtues and judgment of Washington, and so long as he remained at the head of affairs, and indeed during his life, were reluctant to oppose any measure he was led to sanction, even when they thought he had followed unsafe counselors. But when the party calling themselves Federalists became more and more violent and proscriptive, as they did during the presidency of Adams, it was to be expected that many of the true friends of well regulated liberty would desert them. It appears that Bloomfield, as one of a committee of the New Jersey Society of the Cincinnati, Colonel Ogden and General Giles being the others, reported an address to President John Adams, on the fourth of July, 1798, which was unanimously adopted, in which they address him, as they say, "for the purpose of expressing our entire satisfaction with his administration of the government, and in particular as it relates

to the injuries and insults which had been received from the French Republic, as also of making assurance of our readiness again to take the field in obedience to any call of our country, in vindication of its national honor, and in support of that independence, for the establishment of which we patiently endured the toils, hardships, and dangers of an eight years' war."

The main object of this address was to express their resentment of the arrogant conduct of France, and to show their willingness as soldiers, again to take the field. Many of those who ranged themselves on the republican or democratic side, were no doubt carried away with an undue favor for the leaders of the French Revolution; but this was not the case with all, and probably not even of a majority of them. And it must be remembered that those justly obnoxious measures, the sedition and alien laws, had not then been passed, nor had Hamilton exposed the weakness inherent in the character of John Adams, as he afterwards did.

It is certain that a political change had become inevitable at the opening of the present century, and in the providence of God, a man was raised up, endowed with the opinions and the talents necessary to lead the movement. The best abused politician the country has produced, was certainly Thomas Jefferson. Whatever opinion we may now form of his political principles,— and it must be admitted that like most great reformers he held some of them in excess, as for instance, when he wrote, "God forbid we should ever be twenty years without a rebellion; what country can preserve its liberties, if rulers are not warned from time to time that people preserve

the spirit of resistance,"— he was no demagogue, but a true patriot, who thoroughly believed the doctrines he inculcated, and did not profess them merely to win the popular applause. From the beginning to the end of his career he never faltered, but adhered to his opinions with undeviating firmness. This obvious trait of his character, joined to his great influence over the opinions of others by his conversation and his writings, for he never shone as a speaker, was indeed what made him so extremely obnoxious to those from whose hands he snatched the reins of power; who hated him because they feared him, and knew he could not be won by flattery, nor terrified by menaces.

The other great man of that day, and in some respects the superior man of the two, was Alexander Hamilton. He favored a strong government, and relied especially upon the influence of the money power of the country to secure it. As is so well stated by Mr. Van Buren, in his work entitled "Inquiry into the Origin and Progress of Political Parties in the United States," the wonder is, considering their origin and training, that Jefferson was not the aristocrat and Hamilton the democrat. But the contrary was the fact. Neither of them were Anti-federalists, in the sense of being opposed to the adoption of the constitution prepared by the convention; but they were, both of them, dissatisfied with some of its features for opposite reasons. Hamilton did perhaps more than any other man to secure its ratification, but he doubted its success, and became the acknowledged leader of those favorable to such a construction of it, and to such measures as it was supposed would strengthen the government formed under it. Every implied power was to be stretched to the uttermost. His

mind dwelt habitually upon great ideas; but at the same time he was, as described by his friend, Governeur Morris, "more a theoretic than a practical man." He said to Mr. Jefferson, "it is my opinion, though I do not publish it in Dan or Beersheba, that the present government is not that which will answer the ends of society, by giving stability and protection to its rights, and it will probably be found expedient to go into the British form. However, since we have undertaken the experiment, I am for giving it a fair course, whatever my expectations may be." He was regarded as the leader of the Federal party by most of its prominent members (Mr. Adams and a few of his friends excepted), was freely applied to for advice, and gave it quite as freely when it was not asked as when it was. As late as 1802, in a letter to Morris, he designates the constitution as "a frail and worthless fabric."

Mr. Jefferson, giving an account of his going to Philadelphia, after his return from France, to take upon himself the office of secretary of state, says: "The president received me cordially, and my colleagues and the circle of principal citizens apparently with welcome. The courtesies of dinner parties given me, as a stranger newly arrived among them, placed me at once in familiar society. But I cannot describe the wonder and mortification with which the table conversation filled me. Polities were the chief topic, and a preference of kingly over republican governments, was evidently the favorite sentiment." This sort of preference was by no means universal among the Federalists. Most of them were not only devoted, honest patriots, but believers in a republic. Many, however, had no faith in such a

government. My classical teacher, when I was a youth, often told me if I lived to old age, I should live to come under the dominion of a king.

As I have said, a change was inevitable ; a social as well as a political change. The influence of the kingly government under which the colonial subjects so long lived, was more or less apparent in all the arrangements of society. Laws of etiquette as to the preference certain classes were entitled to in going to a dinner table, and in composing social parties, had great influence over many minds. Even our well to do farmers considered the laborers they employed as an entirely different class, and some of them were opposed to their being taught even to read and write. I well remember that this sentiment was openly expressed by more than one in my boyhood. Every effort was made during several of the first years of the conflict by the federal families to put those of the other party under a social ban ; and in this way the families of brothers and sisters were sometimes so divided as to cease all friendly intercourse.

The extent to which the change was carried by the ultimate success of the democratic party, is dwelt upon by Goodrich, a Federalist himself, in his recollections of a lifetime. He says, " The change in manners had no doubt been silently going on for some time ; but it was not distinctly visible to common eyes, till the establishment of the new constitution. Powder and cues, cocked hats and broad-brims, white top-boots, breeches, and shoe-buckles, signs and symbols of a generation a few examples of which still lingered among us, finally departed ; while short hair, pantaloons, and round hats with narrow brims, became the established costume of men of all classes. Jefferson

was, or affected to be, very simple in his taste, dress, and manners. He wore pantaloons instead of breeches, and adopted leather shoe-strings in place of buckles. These and other similar things, were praised by his admirers, as signs of his democracy ; a certain coarseness of manner, supposed to be encouraged by the leaders passed to the led. Rudeness and irreverence were at length deemed democratic, if not democracy." One of the Federal papers of the day attempted to ridicule Mr. Jefferson, because he sometimes rode on horseback, unattended, to the capital, and hitched his horse to a post, like any other citizen.

The ascendancy of General Hamilton over the Federal party, composed of the educated and business men of the day, was the result of his intellectual greatness. That sagacious observer, Talleyrand, in conversation with two Americans, Mr. Ticknor and Mr. Van Buren, spoke of him as the ablest man he became acquainted with in America, and was not sure that he might not add without injustice, or that he had known in Europe. But he could brook no opposition. When a very young man, much trusted by Washington as a part of his military family, he took exception to something the general did, and left the situation. In 1793, when secretary of the treasury, he announced to the President, that considerations relative both to public service and his own dignity had brought his mind to the conclusion to resign his office, at the close of the next session of Congress. In 1800 he published, in his own name, a letter "concerning the public conduct and character of John Adams," which undoubtedly did much to prevent his reëlection, and secure the success of Mr.

Jefferson. What would have been the result had the latter died in 1804, instead of Hamilton, who sacrificed his life to his fear of tarnishing his name as a soldier, in his duel with Burr, we cannot now pretend to conjecture. The great leader of the one party was taken away, while the head of the other was spared to extreme old age. The party thus despoiled soon lost its hold upon the affections of the people, and after an unavailing contest of twenty years, ceased to exist, while the other grew in strength, and so impressed its principles upon the public mind, that during many years, a candidate for the place of chief magistrate of the nation deemed no recommendation to the people could be stronger than the announcement that his political principles were those of Jefferson. And now the party that rules the country has not only adopted the old name of Republican, but carries many of its old maxims and principles to excess, as in England the Tories, under the lead of D'Israeli, lately endeavored to outbid their old opponents the Whigs and Radicals, by introducing an extent of popular suffrage from which the others had shrunk.

An objection to Mr. Jefferson, strongly urged by many good people, was, that he was an infidel, and to elevate him to the presidency would be equivalent to a banishment of the Bible and all its precepts. I have now in my possession a file of letters, addressed to my father, as a man known to have great reverence for religious things, from several clergymen of his acquaintance, strongly adjuring him to abstain from the support of so bad a man. He was not, however, without the support of several excellent ministers, who agreed with him in adhering to Jefferson;

not indeed so much for the sake of the man, but for the sake of the great principles they believed to be involved. And the folly of the demonstrations indulged in by the good men wedded to the Federal party was shown, when in their old age the rival candidates corresponded in friendly terms, and it was found their religious opinions were curiously identical. Both had a reverence for God the Creator; but both rejected Christ as a divine mediator.

One of Mr. Jefferson's innovations upon what were considered the monarchical forms introduced by Washington, led to bad results, and will sooner or later oblige some president, sufficiently bold and strong in the affections of the people, to return to the first usage. In a conversation I had with Mr. Buchanan during the last year of his presidency, when I met him at Bedford Springs, he introduced the subject, and declared very emphatically that it would be impossible for the President much longer to permit every applicant for office to appeal to him personally, as was now the practice. Several of the presidents, it is believed, were literally killed by this pressure upon them. Even in Mr. Jefferson's time, it was not thought decent to introduce the subject, unless he himself invited it; but he broke down the barriers of reserve, which were the only effectual guards to prevent it. I have always understood that the present practice began with Monroe. It would seem that General Grant is making some effort to correct this evil, but apparently with but indifferent success. He has stirred up the hostility of those senators who desire to retain their accustomed patronage; but it remains to be seen whether he will persevere, and establish a much needed reform.

That the objects had in view by the democratic republicans, in their opposition to the party in power, were in the highest degree wise and benevolent, will be perceived by a recurrence to their published reasons. In an address by Ebenezer Elmer, published in the spring of 1801, he writes of the Republican party:—

“They have been perversely abused. Because they talk of equal rights, they are accused of holding a pernicious leveling principle. But the representation is not correct. They do not even dream of destroying the natural inequality among men, for they know that this is wholly impossible; nor would they annihilate the inequality which arises from different acquirements, for this would be unjust. But the precise idea is, that so far as political institutions are concerned, in the formation and regulation of society, a moral and legal equality should be established, as far as practicable, as a kind of counterpoise to the natural and physical inequalities which continually exist.”

Whatever may have been the controlling motives that influenced General Bloomfield, it is certain that he became an undeviating adherent of the democratic party. This party did not succeed in New Jersey, at the contested election held in 1800, in electing a majority of the members of the legislature, who at that time held in their own hands the appointments of presidential electors, and gave the vote of the State for Adams, although a majority of the voters of the State were democratic, and elected their candidates to Congress. In the fall of 1801, the legislature was democratic, and at a joint meeting held on the thirty-first day of October of that year, Joseph Bloomfield received thirty votes for governor, against twenty cast for Richard Stockton.

In 1802 the parties were equally divided, so that on the first ballot Bloomfield received twenty-six

votes and Stockton twenty-six; and on the second ballot there was a like result; on the third ballot Aaron Ogden was substituted for Stockton, but there was no change in the vote. An attempt was made to compromise, the Federalists offering, in a written correspondence between committees of the two parties, to allow the Democrats to take their choice of electing the governor or the senator, whose place was also to be filled, if they would agree to give the other to the Federalists. But the Democrats, under the lead of William S. Pennington, afterwards governor, refused the proposition; and the consequence was that the State had no governor during that year, the duties of the office being performed, agreeably to the constitution, by the democratic vice-president of the council, John Lambert. The next year Bloomfield had thirty-three votes, and Richard Stockton seventeen; and in 1804 he had thirty-seven, and Stockton sixteen votes. Afterwards he was reëlected up to 1812, without opposition.

I have heard from one of the old lawyers, opposed to him in polities, that when he first presided in the court of chancery he made a short address to those present, saying that he was a Republican, and did not desire to be addressed by the title of excellency. Mr. Samuel Leake, an old and rather eccentric lawyer, immediately rose and made him a formal address, with much earnestness and solemnity, saying: —

“ May it please your excellency: your excellency’s predecessors were always addressed by the title ‘your excellency,’ and if your excellency please, the proper title of the governor of the State was and is your excellency; I humbly pray, therefore, on my own behalf, and in behalf of the bar generally, that we may be permitted by your excellency’s leave, to address your excellency, when sit-

ting in the high court of chancery, by the ancient title of your excellency."

The Federal lawyers did not give him credit for sincerity in the wish he expressed about his title. However that may have been, the title was continued, and was never afterwards objected to. He sealed his letters, and some of his official documents, with his private seal, a very handsome coat of arms, an impression of which is affixed to a commission as master in chancery, issued to my father.

It cannot be said that Governor Bloomfield had high qualifications for the position of chancellor; but it is believed that he was distinguished for industry and probity, and that he succeeded in giving general satisfaction by his decrees. The business of the court of chancery considerably increased during the time he sat in that court; but none of the opinions delivered were reported until some years after his retirement.

War was declared against Great Britain in May, 1812, and soon afterwards Bloomfield was appointed by President Madison a brigadier-general in the army designed for the invasion of Canada. His brigade marched to Sackett's Harbor, and early in the spring of 1813 a part of his troops, under the command of General Pike, crossed into that province, and made an attack on Fort George, but were repulsed, and General Pike was killed by the fall of stone from the blown-up magazine. A nephew of the general, who was a lieutenant in the 15th regiment, originally commanded by Pike, was killed in that attack. But it does not appear that General Bloomfield ever gained any laurels as a military commander. With General Dearborn, like himself

an officer of reputation in the army of the Revolution, he was soon withdrawn from active duty on the frontiers, and assigned to the command of a military district, whose head-quarters were at Philadelphia. He remained in the service to the end of the war.

The blunders of the democratic administration, in the measures adopted and the men selected to carry on the war against Great Britain at the commencement of the conflict in 1812, can hardly be understood now. They were such, however, as were to be expected in the case of a nation which for thirty years had been directing its energies to the accumulation of wealth. They were the same in character, and produced very much by the same causes, as the disasters that befell the British army during the first year of the war against Russia in the Crimea. But beside these causes, it must be acknowledged that our president, James Madison, perhaps in many respects the ablest statesman our country has known, was singularly deficient in administrative ability. The qualification most needed by an American president — the ability to discern the capabilities of his subordinates — he was destitute of. He commenced a war with a power the most dangerous for us to encounter of any then in existence ; with a secretary of war who was as deficient in military knowledge and spirit as himself — a Dr. Eustis, of Massachusetts. And when his incapacity was fully demonstrated, he summoned to his aid John Armstrong, the author of the celebrated Newburgh letters, at the close of the Revolutionary War, who, whatever his talents, could not command and did not deserve the confidence of the country. The generals selected to command a newly raised army were old men, who, however

gallant as soldiers they may have been in their youth, had been too long engaged in peaceful pursuits to enter late in life upon a new career as warriors. As a secretary of state or a member of Congress, Mr. Madison was a far abler man than James K. Polk ; but the latter surrounded himself with a cabinet composed of the men best fitted for their stations, and carried through the war against Mexico almost without a single disaster. General Bloomfield was a worthy man, and a good governor ; but he was not the fit man to head the forces sent to invade Canada.

Seldom, however, in the history of the world has a war so poorly waged ended so happily as our war with Great Britain. In my opinion it was a war that could not be avoided ; and was in part made necessary by the extent to which Mr. Jefferson had gone in his endeavors to avoid it, and by his neglect to provide against such a contingency. When the war waged in Europe ended, our enemy, although thus left to direct his whole force against us, was exhausted, and longed for peace. The people of America, including the strongest advocates of the war, had had enough of it ; and the administration was wise enough not to insist upon the formal abandonment by the British government of those pretensions and practices, in regard to the impressment of our seamen, and the interference with our commerce which had produced the war, relying upon what proved to be a well-founded expectation, that the resistance we had made would prevent their future recurrence. And to crown all, a splendid victory closed the conflict, and won for us the respect of the world. With the war also ended the federal party. They had

gone too far in their opposition, and could not retrace their steps. James Monroe was elected president by the vote of all the States but three; and in 1820 he was reëlected with but a single dissentient elector, who voted for John Quincy Adams.

General Bloomfield returned to his residence in Burlington, and in 1818 had the misfortune to lose his wife, with whom he had lived in unbroken harmony and affection. A few years after he married again, a lady who survived him.

In 1826 he was elected, on the general ticket nominated by the Democrats, a member of Congress, and was reëlected in 1818, serving from March 4, 1817, to March 4, 1821. He was very appropriately placed at the head of the committee on revolutionary pensions, and introduced and carried through the bills granting pensions to the veteran soldiers of the Revolution and their widows. He died in 1825, the inscription on his tomb recording simply the truths that he was a "a soldier of the Revolution; late governor of New Jersey; a general in the army of the United States; he closed a life of probity, benevolence, and public service, in the seventieth year of his age."

AARON OGDEN, familiarly known and designated as Colonel Ogdén through life, was governor one year, commencing in October, 1812. He was the great-grandson of Jonathan Ogdén, who was one of the original associates of the Elizabethtown purchase, and who died in 1732, at the age of eighty-six. He had a son named Robert Ogdén, and his son Robert, the father of Colonel Ogdén, resided at the old borough of Elizabethtown, and filled several offices of honor

and trust; among others that of surrogate for the County of Essex. He was a member of the council, and several years speaker of the House of Assembly. Being appointed one of the delegates from the legislature of New Jersey, to the convention that met in New York, in 1765, to protest against the stamp act, he, with the chairman of the convention, refused to sign the protest and petition to the king and parliament, upon the ground that it ought to be transmitted to the Provincial Assembly, and be presented to the government of Great Britain through them. This so displeased his constituents, that he resigned his seat in the Assembly; saying, in the address he delivered on the occasion: "I trust Providence will, in due time, make the rectitude of my heart, and my inviolable affection to my country appear in a fair light to the world, and that my sole aim was the happiness of New Jersey."

When the War of the Revolution commenced, he took a firm part on the side of freedom, and was one of the committee of vigilance for the town. His children were all ardent Whigs; Robert Ogden, Junior, was a lawyer, and had a large practice, and was called the "honest lawyer." He was disabled by a fall in childhood, which prevented him from active service in the field; but he was a quartermaster and commissioner of stores, in which capacities he rendered good service, giving his time, talents, money, and credit freely, to supply the army. Matthias was appointed lieutenant-colonel of the first regiment in the Jersey line, in December, 1775, and was wounded in storming the heights of Quebec, and distinguished throughout the war as colonel of the regiment and brigadier-general by brevet.

Towards the close of the Revolution, Robert Ogden, Senior, retired to Sparta, in the County of Sussex, where he owned large tracts of land, and where he continued a life of usefulness, to both church and state, until the year 1787, when he died at the full age of threescore and ten. His son Aaron was born in the year 1756, at Elizabethtown, and carefully educated, having graduated at Princeton College in 1773, before he had attained the age of seventeen. After leaving this institution he engaged himself as an assistant to Mr. Francis Barber, who was the teacher of a celebrated grammar school, at which Judge Brockholst ~~✓~~ Livingston, and Alexander Hamilton were pupils. But the times soon became too exciting to permit the quiet pursuits of literature. In the spring of 1777 both pupils and teacher entered the army. Ogden was appointed a lieutenant and paymaster in the first regiment, and continued in service to the termination of the war, as aid-de-camp, captain, and brigade major, and inspector. This last named office, now abolished, was, during the Revolutionary War and long afterwards, the most important of the staff offices of the brigade.

Near the close of his life, protracted to a good old age, Colonel Ogden had occasion to draw up an account of his military services during the Revolution, in which he states with modest simplicity the particulars of the most important actions in which he participated, only differing from the official accounts in that he goes more into detail. His gallantry as a soldier, and his veracity as a man, were never questioned.

In the winter of 1775-76, he entered a volunteer corps formed at Elizabethtown. Lord Sterling, who commanded a regiment of militia there, prepared an

expedition to take a large ship at sea, plying off Sandy Hook, while the *Asia* man-of-war, a ship of the line, was lying in the bay of New York, of which the volunteer company formed a part. They embarked in small crafts, boarded the ship, and made her their prize. She proved to be the *Blue Mountain Valley*, of three hundred tons, loaded with coal, flour, and live stock for the British troops at Boston. This exploit was commended in a formal resolution of the Congress at Philadelphia.

He was with his regiment, commanded by his brother, at the battle of the Brandywine, in September, 1777. The regiment was posted in advance, with directions to cross the river and commence the attack intended by General Washington, as soon as he should receive the orders to that effect. The colonel in his impatience sent Lieutenant Ogden to inform the general that everything was ready. He found him surrounded by his staff, but was informed that the intelligence he had received was contradictory, and he therefore did not give the expected order. It appeared that Hamilton had reconnoitered the enemy, and had informed the general correctly, that they were in full march towards his right, but at the same time an express arrived from General Sullivan, who had been placed on the right for the express purpose of observing the movements of Howe's army, stating that there were none of the enemy there. It was afterwards stated to Ogden by Colonel Morris, an aid of Sullivan's, that the scouts sent out by him had spent their time drinking at a tavern, and made a false report, upon the receipt of which Sullivan wrote his dispatch upon a drum-head. And owing very much to this circumstance, the British forces were

enabled to turn the right of the American army, and win the battle.

At Monmouth he received the personal direction of General Washington, at the most critical period of the engagement, to reconnoitre an important position, all the circumstances of which he has fully detailed in his memoir. Upon his report, Washington gave the order to advance, which determined the result of the action. During the movements which succeeded, Captain Ogden, as aid to General Maxwell, and as brigade major, had a large share in the command of the brigade. At the battle of Springfield he greatly distinguished himself, by holding a very superior force of the enemy for some time in check ; and more particularly by his judicious disposition of the militia, who, at a late period of the engagement, were subjected to his command.

In the following winter, Maxwell's brigade was quartered in Elizabethtown, in the immediate vicinity of the British army, when an attempt was made by General Grey, of that army, to surprise them, by an expedition which came over from Staten Island. While Major Ogden was sleeping in the same room with Maxwell, they were informed that one of the pickets had heard the rowing of boats. He volunteered to reconnoitre ; and approaching a house near the meadows, he observed a light ; slackening his pace, the night being very dark, he found himself all at once surrounded by British soldiers, and within reach of a sentinel, who ordered him to dismount. Determined at all hazards to alarm his troops, he immediately wheeled and put spurs to his horse, expecting a shot ; he received from another sentinel a thrust from a bayonet into his chest. He

had strength, however, to reach the garrison, about two miles distant, and gave the alarm. General Maxwell's remark was, "The pitcher that goes oftenest down the well will come up broken at last." By proper attention and care, at his home, he recovered from this wound, which was a very dangerous one. His timely alarm prevented the enemy from doing any mischief. While confined to his room he was frequently visited by the ladies of the town, acquainted with him from the days of his boyhood. One of the "on dits" of the place was, that upon the occasion of one of these visits he received a wound from one of Cupid's darts, deeper and more lasting than that inflicted by the enemy. This wound was healed two years afterwards, by a happy marriage with the author of it.

In the campaigns of 1779 under General Sullivan against the hostile Indians, in the western part of New York, Ogden served as aid to General Maxwell. After the resignation of Maxwell, Captain Ogden commanded a company of light infantry, and served in the corps commanded by Lafayette. He was selected by General Washington to carry a flag of truce to General Sir Henry Clinton, the commander-in-chief of the British forces then at New York. He received his instructions from Lafayette, which were, that if possible, he should get within the British lines at Paulus Hook, and in a private way inform the commanding officer, that he was directed to say that if Clinton would in any way permit Washington to get hold of General Arnold, Major André should be immediately released. He contrived to make the communication to the commanding officer at the supper table, who immediately rose from the table, and re-

turned in about two hours, with a message from Clinton that "a deserter was never given up."

Captain Ogden was with Lafayette in Virginia, when Lord Cornwallis made his attempt "to catch the boy," as he called the young marquis; and the captain had the good fortune to cover the retreat of Lafayette, by throwing a body of the infantry and militia placed under his command into a wood, in the line of march of the right wing of the British army, which was rapidly advancing to turn Lafayette's left wing, and posting them behind a fence. This caused the British to halt and reconnoitre, and consume time in forming their line of attack; and when they advanced into the woods, they were met by a galling fire, and so retarded, as to give time to the American forces to get beyond their reach. He took an active part in all the fighting at the siege of Yorktown, and was commended for his conduct by General Washington.

When Lafayette made his visit to the United States, long afterwards, in a letter to the secretary of war, he made honorable mention of Captain Ogden and his valuable services, while serving under him during the campaign in Virginia.

When the war ended, he was among those who, after they had borne the toils, the perils, and the sacrifices of a long, and at times apparently a desperate contest, laid down their arms and retired, most of them to private life and poverty. In June, 1783, the officers of the Jersey line convened at Elizabethtown, and agreed to become members of the Society of the Cincinnati. In 1824, he succeeded General Bloomfield as the president of this society, and continued the president until his death, when he was

succeeded by Ebenezer Elmer, the last surviving officer of the New Jersey line.

The Society of the Cincinnati was organized at the cantonment of the American army, on the Hudson River, in May, 1783, and its constitution then adopted, as follows:—

“ It having pleased the Supreme Governor of the Universe in the disposition of human affairs, to cause the separation of the colonies of North America from the domination of Great Britain, and after a bloody conflict of eight years, to establish them, free and independent and sovereign States, connected by alliances founded on reciprocal advantages with some of the great princes and powers of the earth :

“ To perpetuate, therefore, as well the remembrance of this vast event, as the mutual friendships which have been formed under the pressure of common danger, and in many instances cemented by the blood of the parties, the officers of the American army do hereby in the most solemn manner, associate, constitute, and combine themselves into one society of Friends, to endure as long as they shall endure — or any of their eldest male posterity, and in failure thereof, to the collateral branches who may be judged worthy of becoming its supporters and members.

“ The officers of the American army having generally been taken from the citizens of America, possess high veneration for the character of that illustrious Roman, Lucius Quintius Cincinnatus, and being resolved to follow his example, by returning to their citizenship, they think they may, with propriety, denominate themselves the Society of the Cincinnati.

“ The following principles shall be immutable, and form the basis of the society.

“ An incessant attention to preserve inviolate those exalted rights and liberties of human nature, for which they have fought and bled, and without which the high rank of a rational being is a curse instead of a blessing.

“ An unalterable determination to promote and cherish between the respective States, that union and national honor so essentially necessary to their happiness and the future dignity of the American empire.

“ To render permanent the cordial affection subsisting among the

officers ; this spirit will dictate brotherly kindness in all things, and particularly extend to the most substantial acts of beneficence, according to the ability of the society, towards those officers and their families who unfortunately may be under the necessity of receiving it.

"The general society will, for the sake of frequent communications, be divided into state societies, and these again into such districts as shall be directed by the state society."

The other provisions were regulations of detail. Each state society meets on the fourth day of July, yearly ; and the general society, composed of delegates, on the first Monday of May, once in three years. To form the funds, each officer was required to pay into the treasurer of the state society one month's pay.

There were originally nine or ten state societies ; but in consequence of the clamor that was raised against them on account of their badge and their hereditary principle, three or four of the societies have been disbanded. Six still remain, namely, Massachusetts, New York, New Jersey, Pennsylvania, Maryland, and South Carolina, each of which has preserved its separate fund, even South Carolina, although much crippled, not being extinct.

The officers entitled to be members were those who had resigned with honor after three years' service, or had been deranged by reforms in the army ; and the elder and male branch of such as had died, and those who had served to the end of the war. Generals and colonels of the French army were informed that they were considered members. Honorary members are also admitted by the state society, not exceeding one to every four of the regular members.

The badge adopted by the society is a bald eagle of

gold, bearing a medal on its breast, the head and tail of silver, suspended by a deep blue watered ribbon, edged with white, descriptive of the union of France and America. Those in actual use are generally all of gold, but are not uniform in size and appearance. They are worn now only at the meetings of the society; and some of the members have declined to do more than suspend the ribbon at the button-hole. The eagle of the president general is adorned with several jewels, and was procured and presented to the society by the French naval officers and seamen. The motto on the medal and seal, which have on them a figure of Cincinnatus, is "Omnia reliquit servare rempublicam."

All the societies have preserved more or less of their funds, and most of them have so used them that they have accumulated. The fund of the New Jersey society amounts now to thirteen thousand five hundred dollars, vested in United States bonds, the interest of which is used to defray the expense of the meetings, and to distribute in aid of the families of deceased members. It appeared by a report made in 1866, that since its formation there has been expended for the expenses of the society the sum of \$11,821, and for benevolent purposes, the sum of \$25,629. About twenty-five members, several of whom reside in other States, are now on the roll, about twenty of whom attend the annual meetings.

Colonel Ogden was chosen vice-president of the general society in 1825, and the president in 1829—succeeding in that office to Generals Washington, Hamilton, C. C. Pinckney, and Thomas Pinckney. At the late meeting of the general society in May, 1869, all the seven state societies were represented. Ham-

ilton Fish, the secretary of state of the United States, is now the president general. Colonel Popham, of New York, was the last surviving original member of the Cincinnati.

When dismissed from the army with the other officers, at Newburg, in 1783, Major Ogden returned to Elizabethtown. On his way there, as he has been heard to say, the thought arose, "I am in my 27th year without a profession; what shall I do?" and soon he said to himself: "I am resolved what to do; I will enter the office of my brother Robert at Elizabethtown, and read law." This resolution he carried out, spending the winter at his father's in Sparta, and devoting his time assiduously to the study of Blackstone. He was licensed as an attorney in September, 1784, the regular period of study no doubt being shortened in consideration of his military services, as has been done in other cases. In due time he was licensed as a counselor, and in 1794 was made a sergeant at law.

Soon after his licensure he commenced the practice of law at Elizabethtown, and in October, 1787, married Elizabeth, daughter of John Chetwood, Esq., the lady who had been the object of his affections from the time he was wounded. He soon had a good practice as a lawyer; and whatever may have been his own reflections on the subject, I think, in view of what afterwards befell him, it is to be regretted that he did not adhere to that profession during his life. He was an accomplished lawyer, and took a high position at the bar. Mr. Coxe's Reports begin in 1790, and it appears that he was much employed in the most important cases argued before the supreme court.

Adopting the language of an address delivered be-

fore the societies of Princeton College, in September, 1839, by Aaron Ogden Dayton, Esq., as just and appropriate, it may be said of Mr. Ogden, that, "Professing strong analytical and logical powers of mind, his disposition always led him to an examination of the principles by which a case was governed, and having made himself master of these, he reasoned from them with great clearness and force, and was seldom surprised or thrown off his balance, by the argument of his adversary. Although his first reliance was upon a knowledge of the elements which entered into the question, he was by no means negligent of the cases in which those elements had been applied. Seldom was there a more industrious lawyer. He never thought his duty discharged to his client or himself, while a single corner of the case committed to his care remained unexplored. He studied the cause on both sides, and made most copious notes for his argument and authorities. To learning and industry, he united great ingenuity and fertility of resources, quickness and accuracy of discrimination, and an eloquence, which at times, when he was deeply moved or strongly excited, was of a very high order. His manner was graceful and impressive; his voice, though not musical, was strong and varied; his countenance had great power and diversity of expression; but more than all this, he understood well the springs of human action. He was an enthusiastic admirer, and might almost be called a pupil of Shakespeare, whose works he was never weary of perusing. He was an ardent admirer of the ancient classical authors; and his conversation with literary friends was frequently embellished by ready and felicitous quotations from their works. He is one among many proofs of the

great advantage a student derives from becoming an instructor of others. His critical knowledge and accurate recollection of the classics he always attributed principally to that cause. The taste never forsook him, and often led him back, during the busiest part of his life, to the fountain at which he had drunk with so much pleasure in his early years." I well recollect, that the first time I saw him, at a fourth of July dinner of the Cincinnati, in 1812, of which I partook, according to the custom of the society, as an heir apparent to the membership, he questioned the elegance of the society's motto, insisting that although perhaps good Latin as it stood, it should have been "omnia reliquit *ad servandam rem publicam*." He was elected a trustee of Princeton College in 1803, and again after he had been *ex-officio* president in 1817, holding the office until he died. In 1816 he was complimented with the honorary degree of LL. D.

As was natural, considering his early career, his talents and disposition were decidedly military. To the last years of his life it beamed in his eye; it was seen in his erect carriage and measured step; it animated his conversation, and in the visions of his dying bed transported him back to the stirring scenes of the army and the camp. When in 1797 a provisional army was raised, in consequence of the hostile proceedings of the French government, he was appointed colonel of the 15th regiment, and held this rank for several months, and until the additional troops were discharged. From this appointment, which in effect put an end to his professional life, he derived the title of colonel, by which he was afterwards usually addressed.

He was one of the prominent leaders of the

Federalists in New Jersey, and in February, 1801, was chosen by the legislature senator of the United States, for two years, in the room of Schureman, who resigned. This place he held, and was an influential member of the senate, during two sessions. Upon the expiration of his term, the republican party had succeeded in carrying a majority of the members of the legislature, and, of course, he was not re-elected. He held, however, at this time, and had for several years held the office of clerk of the County of Essex, which at that time did not interfere with his practice as a lawyer. But in December, 1801, an act of the legislature was passed declaring that if any person holding an office under the State had been elected a member of the senate or house of representatives, and had taken his seat, the commission under the State should be considered vacant, unless he should resign his seat in Congress within twenty days after the passing of said act. Colonel Ogden declining to resign, the legislature elected Jacob Parkhurst clerk, and he took possession of the office. A writ of quo warranto was thereupon prosecuted by Ogden, and two judges, namely, Smith and Boudinot, who were Federalists, pronounced opinions in his favor, Kirkpatrick taking the other side. 4 Hals. R. 434. But the court of errors reversed the judgment of the supreme court, and Parkhurst not only continued to hold the office, but his expenses in defending his position were paid by the State.

Accustomed as we now are to the frequent changes in the politics of New Jersey, and the consequent changes of the office holders, we can hardly appreciate the feelings of the Federalists, when the power

was first wrenched from their hands, and when, notwithstanding their strenuous efforts to regain their position, they found themselves growing weaker, year by year. Scarcely a lawyer of eminence in this State could be counted on the republican side ; and in fact most of the educated men and men of property in the State were Federalists. They held all the offices. It was not until the War in 1812, that, with the aid of a few timid Democrats, who were induced to join them under the name of "Friends of Peace," they could again obtain a majority in the State. In the fall of 1812 they nominated full tickets for electors and members of Congress, and succeeded in obtaining a majority in both houses of the legislature. Aaron Ogden was elected by the joint meeting governor, thirty votes being cast for him, and twenty-two for William S. Pennington.

In 1807 an act had been passed requiring the electors of president and vice-president to be chosen by a vote of the people on the first Tuesday of November. Members of Congress had from the beginning been elected by a general ticket. The peace party of the United States had nominated De Witt Clinton, before this time a Democrat, who now (it is said by James A. Hamilton, in his "Reminiscences," page 44) declared, "that the policy of the federal party, which was that adopted by Washington and Adams, was the only course of measures which could promote the interests and preserve the honor of the country ; I well know the views and purposes of the democratic and jacobin parties, and have no confidence in them ; as president I would administer the government upon the system of Washington and Hamilton." This was satisfactory to such of the Federalists as were

willing to trust him ; but it induced Governor Jay to ask, " Mr. Clinton, do your democratic friends know that these are your opinions and purposes ? " To insure, as they hoped, the election of Clinton, the legislature hastened to repeal the act of 1807, and to provide that the electors should be chosen by themselves in joint meeting. This act did not become a law until the 29th of October, and the succeeding Tuesday was the day of the election by the people. Express riders were sent out with certified copies of the new law, who did not reach some of the counties until the voting had actually commenced.

It should not be forgotten that one federal member was found wise and firm enough to resist this, under the circumstances, wrong and injudicious measure ; and to vote against it from its inception to its final passage, regardless of the entreaties and reproaches of his friends. This was James Parker, of Perth Amboy, who died recently at the age of ninety-two, after a life of great public usefulness. He became a member of the legislature in 1806, and was elected eleven times to that place, taking an active part in the business, and especially in establishing the public schools. He was one of the commissioners to settle the boundary between the States of New Jersey and New York, in 1807, 1827, and 1833, and from his thorough knowledge of all the circumstances of the case, had great influence with the commissioners of this State, and in the final adjustment of the controversy. It may be remarked, however, in passing, that all the New Jersey commissioners entered upon and concluded that negotiation under the opinion that the title to the land on the shore from high water mark to low water mark, was in the own-

ers of the adjoining upland, and not, as it has since been held, in the State. That the State would undertake to sell the shore to railroad companies or others, was not then contemplated. Mr. Parker was among the Hamilton Federalists who gave his support to Jackson in preference to John Quincy Adams, having been chosen an elector in 1828. He was a representative in Congress from 1833 to 1837, but afterwards acted with the Whigs. It would be well for the country if his example in resisting his party, when he believed them to be clearly wrong, should be followed by more of our leading politicians, who might thus in many cases defeat measures urged by extremists, to the public injury.

De Witt Clinton failed to be elected, and the peace party came to an end ; so that in October, 1813, Colonel Ogden was succeeded as governor by William S. Pennington. While he held the office, President Madison, who, in consequence of the ill success of the army, had displaced his secretary of war, and put Armstrong at the head of that department, nominated Colonel Ogden as a major-general, with the purpose, as it was understood, of giving him the command of the forces operating against Canada, and his nomination was unanimously confirmed by the senate. Armstrong was well acquainted with his military capacity, and there is no reason to doubt that he would have proved a good commander. But although his predilections were for a military life, and it was with great reluctance he took the resolution of declining the appointment, his political situation was such that he could not with propriety do otherwise. He put his decision upon the ground that he could be more useful in aiding to repel the enemy, than threat-

ening to land an invading army upon our shore, as commander-in-chief of the militia. In this capacity he was active in organizing volunteer corps for the defense of New York, and would no doubt have taken the field in person had the emergency required it.

Up to this time he was a prosperous man, and had a happy home, where he dispensed an unbounded hospitality. But he had become concerned in a business which, although at first promising great success, after years of vexatious conflict ended in his ruin. In conjunction with Daniel Dod, he engaged in the business of running a steamboat between Elizabeth-town and New York. This brought him into a conflict with Livingston and Fulton, to whom the legislature had granted an exclusive right to navigate the waters of that State with steamboats for a term of years. In 1813, the legislature of New Jersey had passed an act, somewhat retaliatory in its character, granting exclusive privileges in the waters of New Jersey to Dod and Ogden. This produced an application from Livingston for the repeal of this act, and the parties with their counsel and witnesses were granted a hearing at the bar of the house, in January, 1815, the celebrated Thomas Addis Emmet appearing and being heard for Livingston, and Samuel L. Southard and Joseph Hopkinson for Dod and Ogden. Several days were consumed in the argument and hearing of testimony; and the result was, that the law complained of was repealed. And besides this conflict with Livingston and Fulton, the laws for the protection of steamboats in New Jersey became complicated with the question of jurisdiction over the waters of the Hudson and the bay of New York, between the two

States. From year to year laws were passed, having both these disputes in view. When I first entered the legislature in the fall of 1820, I endeavored, without success, however, to aid Colonel Ogden in obtaining a modification of one of these laws, which I thought bore against him unjustly; and I then for the first time became well acquainted with him.

His troublesome adversary was Thomas Gibbons, a lawyer who had amassed a large estate in the south, and who, about the year 1812, had removed to Elizabethtown, where he resided until 1825, dying in New York in 1826. He set up an opposition steamboat, and engaged in the war with untiring zeal and deadly hostility. Litigation and conflict of the most vexatious and trying character ensued, by which, although the personal character of Colonel Ogden remained untarnished, he was harassed, and finally defeated. His exertions during these conflicts were very great; everything conspired to rouse him to vigorous action. The great importance of the questions involved, a firm conviction of the justice of his claims, a deep sense of personal injury, the resistance of a proud spirit against tyrannical oppression, his fortune and the happiness of his family at stake upon the issue, all conspired to call forth his utmost efforts. Every energy of body and mind were brought into action. But his efforts to sustain himself, mighty as they were, proved unavailing. His fortune was sunk, his spirits were broken, domestic affliction supervened by the loss of his wife in 1825, and he never recovered the position from which he fell.

After the repeal of the law of New Jersey, he was compelled to enter into an arrangement with Livingston and Fulton, who authorized him to run his boat

in the waters of New York. In order to avail himself of this arrangement, it became necessary for him to file a bill in the court of chancery of New York against Gibbons, and that court sustained him by prohibiting the running of his opponent's boat, and the court of appeals of the State of New York affirmed the decree in his favor. But Gibbons carried the case into the supreme court of the United States, and that court reversed the decision of the New York court; holding that as Gibbons' boat was licensed to carry on the coasting trade, under the laws of the United States, that was a regulation of commerce paramount to any law of a State, by virtue of which his boat had a right to run from one State to another, although forbidden to do so by the local law. By this decision the great principle was established, in the language used by Mr. Webster in the argument, that "the commerce of the United States is a unit." The steamboat monopoly was overthrown.

The adversary with whom he had to contend was devoid of scruples, delighted in warring with poisoned arrows, and unhappily had at his command not only great wealth, but political and personal rivalries that made it impossible to withstand him. The now celebrated millionaire of New York, Cornelius Vanderbilt, was one of the captains he employed, and was much trusted by him.

About the year 1816 Gibbons undertook to challenge Colonel Ogden to a personal combat; and when he was treated with the contempt he deserved, and his communication would not be received, he proceeded with a horsewhip in his hand, to fasten a libelous handbill on the colonel's office door, when he was himself absent, but in the view of his family. This

produced an action of trespass against him, in which the jury rendered a verdict in Colonel Ogden's favor, and assessed the damages at five thousand dollars. The application to set this verdict aside is reported in 2 South. R. 518. The court declined to interfere; but a bill of exceptions had been taken at the trial, the case was removed by writ of error into the court of errors, then consisting of the legislative council, and a majority was procured to reverse the judgment. Upon a second trial, the jury rendered a verdict for fifteen hundred dollars.

In 1829 he removed his residence to Jersey City, and in the winter of that year he was arrested for debt in the city of New York, and remained in confinement two or three months, declining entirely the offers of friends to settle the claim. When this action became known at Albany, the legislature of New York,—and it is said through the volunteer exertions of Aaron Burr,—passed a law not only forbidding the future imprisonment for debt of a revolutionary soldier, but making it so to operate as to discharge Colonel Ogden forthwith. A similar law was passed in New Jersey.

He was among those old Federalists, who, being ardent admirers of General Hamilton, regarded John Quincy Adams as a renegade, and therefore preferred and supported Jackson for the presidency. He was to some extent provided for, not only by his pension as an old soldier, but by an act of Congress creating a custom-house office at Jersey City, which he held during the remainder of his life. The State of New Jersey granted him a tract of land opposite that city, and below the low water mark of the river, which, however, did not prove to be of much value. He died in 1839, at the age of eighty-three.

CHAPTER VI.

GOVERNORS I HAVE KNOWN.

WILLIAM S. PENNINGTON. MAHLON DICKERSON. ISAAC H. WILLIAMSON. PETER D. VROOM.

WILLIAM SANDFORD PENNINGTON, governor and chancellor from 1813 to 1815, was elected by the joint meeting of the legislature, in October, 1813. When I was examined for license as an attorney, in May, 1815, I recollect that, according to the usage at that time, I called on him with my recommendation, signed by the justices of the supreme court, and he signed my commission. He resided then with his family in the government house, now the State Street Hotel, and was the last governor who did this. His successors for many years rented the house to some person with whom they boarded when in Trenton. None of them permanently resided in that place.

Governor Pennington was the great-grandson of Ephraim Pennington, one of the original settlers of Newark, emigrants from Connecticut. His name is subscribed to the fundamental agreements regulating the settlement, dated June 24, 1667; one of which was that none but church-members should be admitted freemen or have a vote; and that they would with care and diligence provide for the maintenance of the purity of religion professed in the congregational churches.

The great-grandson was born in Newark, in the year 1767. But little is known now of his early life. It is understood that he was apprenticed to his mother's brother, Mr. Sandford, a farmer, after whom he was named, who proposed to leave him some of his property; but on the breaking out of the Revolutionary War, the uncle was a loyalist, and, threatening to change his will if the nephew joined the rebels, a controversy arose which ended in canceling the indentures, and the young man soon entered the army.

The tradition in the judge's family always has been that his first service was as a non-commissioned officer in a company of artillery, and that at one of the engagements with a detachment of the British army, he was found by General Knox, almost alone, actively loading and firing a piece of artillery, with such signal bravery as to attract the attention of the general, and to induce him to promise him a commission on the field. It appears that he was commissioned as a lieutenant of the second regiment of artillery, April 21, 1780, to take rank from September 12, 1778. But little is now known of the particulars of his service, except so far as they are stated in a private journal, commencing May 4, 1780, and ending in March, 1781. During most of this time he was with the park of artillery in the neighborhood of West Point.

He notices the conflict at the short hills, near Springfield, June 23, 1780, but did not himself participate in it. Upon the occasion of a visit to Newark in July, he states: "The power I suffered my passions to have over me when I came home, upon finding my horse carelessly lost, how I threw my sword down and broke the hilt, etc., is not fit to be recorded. However, I found my horse after much fatigue." He

mentions sleeping in a hay-rick at Newark, on one occasion, for fear of being surprised by refugees. The usual camp rumors of successes or disasters at other places are recorded, most of which turned out to be very erroneous. In September, he records that plundering and marauding had become so common in the army, that his excellency the commander in-chief had ordered a soldier convicted of the crime to be executed, and declared his intention to show no favor to any person convicted of so infamous a crime. Of the date of September 26, news was received of the treason of Arnold and the capture of André. "Monday, 2d October, 1780.—This day, at twelve o'clock, Major André, adjutant-general of the British army, was executed in camp as a spy. He behaved with great fortitude. Although self-preservation and the laws and usages of nations justify, and policy dictates the procedure, yet I must conceive most of the officers in the army felt for the unfortunate gentleman."

"Wednesday, October 16, I spent a principal part of the day in Newark, visiting my female acquaintances in this place. The ladies in town, to do them justice, are a very sociable, agreeable set of beings, whose company serves to educate the mind, and in a manner to compensate the toils of a military life." He mentions dining with General Howe and General Knox. "Tuesday, December 26.—This day I had the honor to dine at his excellency General Washington's table, and the pleasure of seeing for the first time the celebrated Mrs. Washington. Instead of the usual subjects of great men's tables, such as conquering of worlds and bringing the whole human race into subjection to their will, or of the elegance of assemblies and balls, and the sublimity of tastes in dress, etc., the

simple but very laudable topic of agriculture was introduced by his excellency, who, I think, discussed the subject with a great degree of judgment and knowledge. The wine circulated with liberality, but the greatest degree of decorum was observed through the whole course of the afternoon.” January 6, 1781, the mutiny of the Pennsylvania troops at Morristown is mentioned. “Monday, 22d, we received information that the Jersey line had followed the example of Pennsylvania in mutinying, in consequence of which a detachment of artillery consisting of three 3-pounders, to be commanded by Captain Stewart, was ordered to parade immediately. I was ordered to join the above detachment, vice Alling. 25th.—This day the detachment marched to Smith’s Cove, and halted for the night. 26th.—This day we marched to Ringwood, and joined a detachment under Major-general Howe. Saturday, 27th.—This day the above detachment marched at one o’clock, and at daylight surrounded the Jersey encampment near Pompton, where the mutineers were quartered. No other terms were offered to them, than to immediately parade without their arms. General Howe likewise sent them word by Lieutenant-colonel Barber, that if they did not comply in five minutes, he would put them all to the sword; rather than run the risk of which they surrendered. Upon which the general ordered a court-martial in the field to try some of their leaders; three of whom, namely, Grant, Tuttle, and Gilmore, were sentenced to suffer death. Grant, from some circumstances in his behavior, was pardoned. Tuttle and Gilmore were immediately executed. The mutineers returned to their duty, and received a general pardon.”

“February 8.—This afternoon an entertainment

was given by Lieutenant-colonel Stevens, of the second regiment, his excellency General Washington, the Marquis de Lafayette and families, and the officers of the park of artillery. His excellency and the marquis left us at dark, upon which we immediately opened a ball, and spent the evening very agreeably, but lamented the absence of the ladies of our acquaintance, who would have graced the ball had they been there, and rendered the entertainment perfectly consummate. Mrs. Stevens was the only lady that graced the assembly."

His service after this year I have not been able to ascertain, except that the park of artillery to which he belonged took part in the siege of Cornwallis at Yorktown, in Virginia. It appears that he was wounded, but when and where is unknown. He left the service with the rank of captain by brevet.

After the war he carried on the business of a hatter for a short time, and is supposed to have worked at that trade before he entered the army. He soon engaged in mercantile business in Newark; and in 1797 was elected a member of the Assembly from the County of Essex, remaining a member of that body three years. In 1801 he was elected a member of the council, and again in 1802. Upon the great division of parties which occurred about this time, he and his brother Samuel warmly espoused the republican side, in opposition to the federal party of that day, and continued to be leaders of their party for the ensuing twenty years. In the fall of 1820, when a successful effort was made to assuage the fierce party spirit which had prevailed, I had the pleasure of meeting Samuel Pennington in the House of Assembly, where we heartily coöperated in leaving the

responsibility of electing the county officers, then mostly chosen in joint meeting of the two houses, to the members of the county, without regard to party affinities, never interfering if they could agree. His brother William was the leader of the Republicans in 1802, when there was a tie in the joint meeting, so that no governor could be chosen during the year. As a senator was also to be chosen at this time, the Federalists, by their committee, offered to the Republicans their choice of these two offices; but the republican committee, headed by Pennington, were too confident that a strong current was running in their favor to accept this compromise, so that during this year both the offices were left vacant.

Being of an active mind, Pennington entered the office of Mr. Boudinot as a student of law, and in May, 1802, was licensed as an attorney. In February, 1804, he was elected by the joint meeting an associate justice of the supreme court, less than two years after he was licensed as an attorney, and before he could become a counselor. The Republicans had but few lawyers belonging to their party, and were obliged to take the best they had or appoint their opposers,—as matters then stood, a thing not to be thought of. The vacancy filled by Pennington was occasioned by the promotion of Andrew Kirkpatrick to be chief justice, who not being a politician acted with the Republicans, and was accepted as belonging to their party, although never accredited as a partisan. In the fall of 1804, William Rossell, a man of good judgment and excellent character, a saddler, with but the slightest knowledge of law, was appointed an associate justice of the supreme court. The latter never acquired the confidence of the bar; but Judge Pennington, who

was a strong minded man and diligent student, was soon accepted as a good judge. He was appointed reporter in 1806, by virtue of a law then recently passed. Kirkpatrick, who was an accomplished lawyer, of course led the court; but Pennington did not hesitate when he thought him wrong, to differ, and seldom failed to support his opinions by sound reasons. I remember being present in court, before I was licensed, and for the first time, when an important cause had been noticed for trial at the bar, and when a jury of view and many witnesses were in attendance from Cumberland. The plaintiff not being prepared to bring on the trial, his counsel objected to doing so, on the ground that the defendant's attorney had neglected to add the *similiter* to the plaintiff's replication tendering an issue. The chief justice held this indispensable, and Judge Rossell concurred; but Judge Pennington held that the *similiter* was so purely a matter of form that it might be at any time added. Now, as is known to the bar, a statute has declared even the form unnecessary. The consequence of this decision was to save the plaintiff from the payment of heavy costs.

When the peace party obtained a majority in the fall of 1812, Pennington was the candidate of the republican, or as they were then and afterwards called, the democratic party, and received twenty-two votes in the joint meeting for governor, against thirty cast for Colonel Aaron Ogden. In 1813 he received thirty votes for that office, while Ogden's vote was reduced to twenty. In 1814 Pennington received twenty-nine votes and Ogden twenty-three.

In the year 1815 Robert Morris, who held the place of judge of the United States district court for New

Jersey, and had for several years been in such bad health as to be unable to hold the court, died. Pennington was nominated by President Madison to succeed him, and being confirmed by the senate, held that office until his death, residing, as he had after he ceased to be governor, at Newark.

At this time the district court held two terms in each year at Burlington and two at New Brunswick. The court rarely sat more than one day, very little business coming before it. In 1824 Joseph M'Ilvaine, who had been for several years the district attorney for the United States, having been elected to the senate of the United States, I was appointed district attorney in his place, and thus became more intimately acquainted with Judge Pennington. His son William (afterwards governor) was clerk of the court. Our united efforts, I remember, were always unavailing, to induce him to keep his court open one day beyond what was absolutely necessary for the transaction of the public business, and thus to permit us to receive a little more daily pay. He belonged, indeed, to that old-fashioned race of politicians, now apparently extinct, who thought first of their duty to the country, and did not subordinate that to the interests of themselves or their friends. Judge Washington, with whom he sat in the circuit court, although an incorruptible judge, was much more liberal (lavish, perhaps, is the proper designation), saying, very pleasantly, that Uncle Sam was rich, and a public debt was a public blessing,—a common sentiment then among the old Federalists, upon the idea that a heavy debt tended to strengthen the general, or, as was then the favorite phrase, the federal government.

During the five years I held the office of district

attorney, no grand jury was summoned in the United States district court; but such a jury was convened twice in each year in the circuit court. But one indictment, however, was drawn by me, and that was for an alleged obstruction of the mail, which, as it turned out on the trial, happened from the fact that Ball (a well known deputy sheriff of Essex County) could not win a bet he foolishly made with Reeside's driver, that his horse could outtrot the splendid team of full blooded animals then on the route between Elizabeth and Newark. The charge against Ball, supported by evidently hard swearing, was by way of offset against an indictment of the driver in the state court, for purposely driving his heavy stage upon Ball's light carriage, and upsetting him into the ditch. Since the War of the Rebellion the criminal business of the United States courts has been much increased, and the tendency is to increase it still more. This, added to the business of the bankrupt court, has made the district court a very busy and very important tribunal.

The business transacted in Judge Pennington's court consisted of a few informations for violations of the revenue laws, and suits for debts due the United States and the postmaster-general. I remember but one decision of the judge important enough to be stated, and that was the construction of the New Jersey statute, enacting that a scroll or other device, by way of seal to an instrument for the payment of money, should be of the same force as a wax seal, so as to bring within that description the official bond of a postmaster. One case which went before Judge Washington upon a writ of error, and is reported in 4th Washington Circuit Court Reports, presented a

complexity of pleading and issues so singular and so complete, that the judge took the papers to Philadelphia, as he said, to show some of the lawyers there a perfect common law record. It was an action at the suit of the Postmaster-general *vs.* Reeder and his sureties, the pleading in which had been filed when I took charge of it. The declaration, in accordance with the practice, was simply upon the penalty of the bond, without assigning the special breaches. Ten pleas were interposed, to some of which there were demurrers, and to some an issue of fact was joined, one of them being a general allegation of fraud. The demurrers were all held to be well taken. Upon the trial of the issues of fact before a jury, made up mostly of residents in Trenton, it became pretty manifest that, owing to the sympathy felt for Mr. Reeder's sureties, the jury on the issue of fraud, which consisted only in long forbearance to prosecute, would be sure to disregard the judge's charge, and render a verdict for the defendant. By the advice of Richard Stockton, who was associated with me as counsel for the government, I demurred to the evidence. Defendant's counsel insisted that it was optional with them whether they would join in the demurrer, but the judge ruled they were bound to do so, and the jury was dismissed. Upon the argument of this demurrer, it appeared one of the pleas upon which issue was taken was fully proven, so that it became necessary to insist that the plea itself was radically bad, and presented no defense, and that the case was substantially the same as if the jury had rendered their verdict finding it true, when it would be open to the plaintiff to move for judgment *non obstante veredicto*, as it is technically called. This view was

sustained by the judge, and a judgment ordered for the plaintiff overruling all the pleas. It then became necessary to assign the breaches and assess the damages upon a writ of inquiry, which was done, and a final judgment entered for the plaintiff. After an elaborate argument before Judge Washington, he affirmed this judgment.

Although, as I have remarked, Judge Pennington was an ardent Democrat, there is every reason to believe that, had he lived until the formation of the whig party, he would have sympathized with them, as his sons and most if not all his family connections and friends afterwards did. He looked upon John Quincy Adams as the true republican successor of Jefferson and Madison. I remember hearing him, at a Cincinnati dinner, about the beginning of Mr. Adams' presidency, say, that if Jackson should be elected president, he should feel his neck every morning, to find whether his head was still in its right place; to which old General Heard responded, very forcibly, "You can't lose it a day too soon." He died September 17, 1826; carried to his grave with the respect of all who knew him, as a reliable friend, an incorrupt and just judge, and an honest man.

MAHLON DICKERSON, two years a justice of the supreme court and two years governor and chancellor, was a descendant of Philemon Dickerson, who with his brothers emigrated from England and landed in Massachusetts in 1638. He was admitted a freeman of the town of Salem in 1641, and removed to Southold, Long Island, 1672. He had two sons, Thomas and Peter. Thomas had four sons, all of whom moved to Morris County, New Jersey, about 1745, and from

these the Dickersons and Dickinsons, as some write their names, of this State are descended. Mahlon was the grandson of one of these, and the son of Jonathan Dickerson, and was born in 1771. He graduated at Princeton College in 1789. In 1793 he was licensed as an attorney, but does not appear to have taken the degree of counselor. The next year after his graduation, he joined Captain Kinney's troop of horse, and served in the expedition sent into Pennsylvania to suppress the Whiskey Insurrection.

He had two brothers, one of whom became a physician and the other a lawyer, and they appear to have all taken up their residence in Philadelphia. Mahlon studied for a time in the office of James Milnor, afterwards quite distinguished as a member of Congress, and a clergyman of the Episcopal Church at New York. He was admitted to the bar of Pennsylvania in the year 1797.

In politics he was a zealous Republican, and for some time wrote for the "Aurora" newspaper, edited by William Duane. In 1799 this party elected Chief Justice M'Kean governor of Pennsylvania for three years, and he was reëlected twice afterwards, holding the office nine years, then ineligible for another term. Dickerson was chosen a member of the common council, and in 1802 was appointed by Mr. Jefferson a commissioner of bankruptcy, in company with A. J. Dallas, John Serjeant, and Joseph Clay, leading supporters of the Jefferson administration. In 1805 Governor M'Kean appointed him adjutant-general, which office he resigned in 1808, to take the place of recorder of the city, a judicial office, held, as then constituted, during good behavior, and as such a member of the mayor's court, exercising criminal jurisdic-

tion in the city, and having besides the power and jurisdiction of a justice of the peace.

Governor M'Kean was at this time somewhat advanced in life, had held high offices, and was naturally irascible and self-willed. His powers under the existing constitution of the State were very extensive, the appointment of the state and many of the county offices being vested in him, without the necessity of submitting them to any other branch, and the judicial offices held during good behavior, with the provision that they might be removed by the governor upon the request of two thirds of each branch of the legislature. It was said that upon one occasion, when such a request was made, the governor appearing to hesitate, a committee of those in favor of the removal waited on him, and submitted a formal argument to the effect that the word "may," as used in the constitution, made it his duty to comply; but after hearing them to the end, he broke up the conference by declaring that in the case before him, may meant won't. During the governor's second term, he so entirely disregarded the attempted dictation of the more violent Democrats, among other appointments conferring the place of chief justice on William Tilghman, one of the federal judges of the United States circuit court, that he was openly attacked by the "Aurora," and an attempt was made to impeach him. But many of the more intelligent and conservative Republicans, including Dallas, Serjeant, Ingham, and Dickerson, supported M'Kean, forming what they called the constitutional republican party, but called by Michael Leib, a noted politician of that day, a *tertium quid* party, from which they were commonly designated as quids. Dickerson was a zealous and active supporter

of this party, and wrote many political squibs in the newspapers that supported it. Their governor was reëlected, by the aid of the Federalists.

His father having died, leaving what proved to be a very valuable real estate, Dickerson took up his residence in 1810, in Morris County, for the purpose of taking charge of it. In 1812, and again in 1813, he was elected a member of the Assembly, from Morris County. While thus a member, he was chosen by the joint meeting in November, 1813, justice of the supreme court, in the place of Pennington, elected governor. He received the twenty-nine votes of his party, the others, numbering twenty, voting for Isaac H. Williamson. He was also appointed reporter, but did not accept the appointment, and in fact no case decided while he was on the bench has been reported. It has been well understood that he had no love for the profession of a lawyer, nor for the position of a judge or chancellor. He was chosen governor without opposition in 1815, and was re-chosen in 1816. But in February, 1817, he was chosen senator, no person being nominated in opposition; and in November, 1822, he was again chosen in the same manner. When his term again expired in 1829, a majority of the legislature were opposed to him in politics, and Theodore Frelinghuysen was chosen senator for six years. But it happened that Ephraim Bateman, who had been senator two years, was compelled by illness to resign, and a contest arose in filling that vacancy. William B. Ewing, a member of the Assembly, was a candidate, and Mr. Southard, who still held the place of Secretary of the Navy at Washington, was advocated by his friends. After many ineffectual votes, the opponents of Southard carried a resolution, that he was ineligible

because his residence was not in the State. The result was that a majority of the votes were finally cast for Dickerson.

During the sixteen years Mr. Dickerson held the place of senator, he was an influential member of that body, ranking among the old-fashioned Republicans, opposed to Calhoun and his doctrines, friendly to William H. Crawford, rather than to Adams or Jackson ; but taking sides with Jackson, when things so fell out, after much backing and filling, that his party took the place of the Democrats. Being largely interested in iron mines, he differed from many of his political associates and advocated a high protective tariff.

In May, 1834, he was appointed Minister to Russia, and expected, for some time, to accept the situation, and to take his departure for St. Petersburg, but finally decided to remain at home, as was understood, at the particular request of Mr. Van Buren, to afford him his aid in securing his nomination and election as President. In June of that year he was taken into General Jackson's cabinet as Secretary of the Navy, and remained in that position four years, when he resigned, and may be said to have retired from public life.

In September, 1840, the office of judge of the district court becoming vacant by the death of Judge Rossell, he was appointed to succeed him, and retained the office until early in March, 1841, when he resigned, and his brother Philemon was appointed. The latter was a member of the house of representatives, where parties were very evenly divided, so that it was not thought desirable by his party friends that he should resign, to prevent which, Mahlon accepted and performed the duties of the office about six months. 1841

After this he was for two years president of the American Institute at New York. He had an ample fortune; but left no descendants, never having been married. He died at his residence in Suckasunny, Morris County, in the year 1853, at the age of eighty-two.

ISAAC H. WILLIAMSON, governor and chancellor from 1817, to 1829 was born at Elizabethtown, in the year 1767, the youngest son of an ancient and respectable family of that place. He received only a common grammar-school education, and studied law with his brother, Matthias Williamson, then, and for many years, one of the leading lawyers of the State. In 1791 he was licensed as an attorney, in 1796 as a counselor, and 1804 was called to be a sergeant at law.

Continuing to reside at his native place, he soon took a high rank as a lawyer and advocate, and had a large, and for that day, a profitable business. There were in the County of Essex, including Newark and Elizabethtown, several able competitors at the bar, among whom Col. Aaron Ogden was perhaps, for a time, the leader, some twelve years his senior in age. When Williamson had reached the head of his profession, and Colonel Ogden had allowed himself to be diverted to other pursuits, the latter, speaking of their early competition, remarked, that he soon found Isaac H. Williamson to be pressing on him very hard, and the one whose skill and learning he found the most troublesome as an adversary. His practice was extended into several of the adjoining counties. As the deputy of Attorney-general Woodruff, he prosecuted the pleas of the State in the County of Morris for

several years, with distinguished ability. The indictments drawn by him while he held that office, continued to be referred to for years, as safe precedents; and indeed no lawyer in the State was more accurate in all the details of his profession. He once remarked to me, while governor, that he had never been obliged to submit to a nonsuit, in any cause which he conducted as an attorney. He was a diligent student, and made himself familiar with all the doctrines of the common law, by a careful perusal not only of the old writers, like Coke upon Littleton, but also of the reasoning of the judges in the books of Reports. After I became well acquainted with him, I found him by far the most satisfactory adviser on intricate questions of law that arose in my practice; indeed, I might with truth say, the only useful adviser I undertook to consult. His mind seemed so thoroughly imbued with the principles of the law, and his memory in regard to decided cases so exact, that he seldom failed to afford me essential aid; and he did it always with cheerful readiness.

It may be said without exaggeration, that Mr. Williamson was one of the most thorough-bred lawyers that ever adorned the bar of New Jersey. His learning was almost entirely the learning essential to a great lawyer, which of course was by no means confined to the mere technical details of the profession. He was a diligent reader of history; but during his busy professional life he did not allow his mind to be diverted by what is termed light literature; and he altogether abstained from any active participation in mere party politics. He was an able and very successful advocate; and when made chancellor, became a great equity judge; but, like Lord Eldon, he was

not master of a good style, either in speaking or in writing.

Although never active in politics, he was in early life ranked as a Federalist, and did not afterwards attempt to conceal or deny the fact. But he did not sympathize with that party in their violent opposition to the war with Great Britain which commenced in 1812. After the close of that contest, when it became apparent that a change in the political conflicts of the country was about to ensue, he was in the year 1815 put upon the ticket for member of Assembly, from the County of Essex, without his knowledge, among the Democrats,—through the influence of the Penningtons, as I have heard, who then were the leaders in that county,—and was elected a member of the legislature.

Mahlon Dickerson was reëlected governor, without opposition, at the fall meeting; but at a joint meeting held in February, 1817, he was chosen senator, and then resigned the office of governor. A few days afterwards, Williamson was chosen governor, by a vote of twenty-nine in his favor, against twenty-two for Joseph McIlvaine. The question seems to have been not political, but between East and West Jersey. He was afterwards reëlected every year, without serious opposition, until the fall of 1829, when the Jackson party obtained a majority in the legislature, and he was superseded by the appointment of Peter D. Vroom. More than once, during the time he held the office, I heard him lament, almost with tears in his eyes, that he had been so foolish as to leave the profession he loved, and place himself in a position from which he was liable at any time to be removed. His salary was only two thousand dollars, provided for by

a new law every year, supplemented by some fees,—a large part of which, I have understood, through the defaults of the officers to whom they were paid, he never received.

Prior to his entering upon the duties of chancellor and judge of the prerogative court of the State, those courts were comparatively unimportant. Occasionally an important case was prosecuted in them, but the practice was in many respects very loose, and was understood by very few members of the bar. From 1790, until the act of 1799, drawn by Judge Paterson, had remedied this and many other defects, witnesses were examined before the chancellor, as in trials before a jury. Chancellor Williamson made himself thoroughly acquainted with the practice of the English courts of equity, after which ours had been originally modeled, and in 1822 prepared and adopted a well-digested set of rules, greatly improving the business of the court. It was not until the supplement of 1820 to the chancery act authorized a sale of mortgaged premises, by virtue of a decree in all cases, that it became the common practice to collect a debt secured by a mortgage by means of a bill in chancery. This change brought a large increase of business, so that from that time to the present, owing to the high character of most of the chancellors, and to the change of the laws in other matters, the court of chancery has been deservedly held in high repute, and has been a most important part of the judiciary system of the State.

In the year 1820 I was elected a member of the House of Assembly, and then became well acquainted with Governor Williamson, boarding with him at the Government House for several years, when at Trenton.

His family residence continued at Elizabethtown. My practice as a lawyer in his court was not large, but I appeared before him in several cases of considerable importance. His opinions (except in a few cases) have not been printed. During his time there was no reporter of equity decisions. He settled many disputed questions, especially in reference to the lien of several mortgages; and so far as I am aware, his rulings have been since adhered to.

One case in which I was associated as junior counsel with Richard Stockton, gratified me very much, because the decision in our favor was put upon the point made by me, rather than upon the ground taken by my senior. We were for the defendants, in a case for the specific performance of a formal contract to convey to the complainants one half the water power of Cohansey Creek, at Bridgeton. A verbal contract had been previously entered into by the owner with our clients to convey them the property, which he proceeded to do, after he had executed the formal contract to convey it to the complainants. The chancellor held it to be the true construction of the statute of frauds that, although no action could be sustained on the verbal contract, it was a complete defense to the action to enforce a subsequent contract in writing. This was then a new point. The same construction has been since adopted by the English court of chancery.

I was present at an amusing scene, when Mr. Van Arsdale, an old lawyer of Newark, considered to be very astute and particular, fell into a trap dexterously prepared for him by George Wood, then rising to celebrity. He had filed a bill to foreclose a mortgage more than twenty years due; and set out with great

particularity several payments alleged to have been made on it by the mortgagor. The answer, sworn to, drawn by Mr. Van Arsdale, positively denied the alleged payments, and denied that any payments had been made. When he took the ground on the argument that, after twenty years, payment of a debt was to be presumed, the chancellor remarked with an amused smile, "How can I *presume* a payment which the party himself positively denies?" The dilemma seemed then for the first time to be perceived by the counsel, and the ludicrous manner in which he exclaimed, "Is my client to lose his money by such a trick as that?" caused a general laugh, in which the court could not help participating.

The most remarkable case in which it was my fortune to be employed while at the bar, and which is worth notice as evidence of the great superiority of our present court of errors, defective as it is, over the old court, consisting of the governor and council, was *Smith vs. Wood*, a bill in chancery for the sale of mortgaged premises, to raise a large sum of money. It lasted ten years, not because it was a chancery case,—for some common law cases have lasted longer,—but from other causes. The facts were complicated, but not disputed, and the law applicable to it was very plain; but every possible ground of defense, begun merely for delay, was urged that could be imagined by such men as Wall and Wood. I argued it nine times: three times before a master; once before Chancellor Williamson, who went out of office before he had time to make a decree; once before Chancellor Vroom, whose opinion is reported in *Saxton Ch. R. 74*; three times before the court of errors and appeals; and once before Chancellor Philemon Dickerson.

After Williamson went out of office, he was employed as counsel with me. When the case was ready for argument before the court of appeals, it happened that he had been elected a member of that court, as a councilor from Essex, and of course could not sit on the hearing. Unfortunately, as it seemed, he was induced to take part in the argument. The case was heard during the sitting of the legislature, so that it occurred that, during part of the time, Mr. Williamson was engaged as a legislator in opposing one of the bills of the Camden and Amboy company, and at another time he argued the cause. Both the parties resided in Philadelphia, and had no connection with the canal or railroad; but the result was that, after ordering a second argument of one of the questions raised, the chancellor's decree for the complainant was reversed by a bare majority,—every member of the court who voted in opposition to Mr. Williamson's argument against the company voted in the same way upon the judicial question. Fortunately when the grounds of the reversal came to be stated in the decree, as became necessary, the case went back for new testimony, and a new decree in our favor, which, upon a new appeal under more favorable circumstances, was affirmed.

It may be mentioned that Williamson and Vroom, who, as the court was then constituted, presided and voted, even upon appeals from their own decisions, were alike, in making no effort to sustain their opinions, except by a formal statement of their reasons, and were quite frequently overruled by men who knew nothing about law or equity. The well established and still continued practice in the House of Lords is, that only those lords who have been edu-

cated lawyers vote in judicial cases, so that, during the time of Lord Chancellor Hardwicke, it was said an appeal from his decision amounted only to an appeal from Hardwicke as a chancellor to Hardwicke as a member of the House of Lords; but all voted in the old court of errors. Until 1799, no appeal from the decrees of the chancellor could be taken; but when in that year the act respecting the court of chancery, drawn by Paterson, was before the legislature, a clause was added, allowing an appeal, and although it was strongly insisted that such an appeal was not warranted by the Constitution of 1776, it was sustained by the court, and is still in force.

The popular vote of New Jersey in 1824, much to the surprise of many, was in favor of Jackson for president, but the legislature does not seem to have had a majority of this party, and Williamson was re-elected without opposition. In 1828, at which election Jackson and Adams became the opposing candidates, the latter received a majority of the popular vote, and the legislature was of the same complexion. Indeed it can hardly be said that the lines of demarkation between the supporters of the two parties, were as yet distinctly marked. Williamson was still elected governor unanimously. But after the inauguration of Jackson in 1829, a violent contest ensued, and the result was, that in the fall of that year his friends obtained a decided majority in both branches of the legislature. In the joint meeting held for the election of governor, thirty-nine votes were cast for Garret D. Wall, two for William Chetwood of the Jackson party, and only fifteen for Williamson. Mr. Wall declined accepting the appointment, and then Peter D. Vroom was chosen, as I have heard him say, very unexpect-

edly and against his wishes. He had been formerly ranked as a Hamilton Federalist, as were also many others who now became supporters of Jackson. Vroom was elected in 1830 and 1831, but in 1832, although Jackson carried the popular vote, the legislature had a majority of "National Republicans," as the party opposed to him now called themselves. Mr. Southard was chosen governor, but being elected to the Senate of the United States in the ensuing February, Elias P. Seeley was elected governor, being superseded, however, in the fall of that year by Vroom, who continued in office until the fall of 1836, when he declined further service, and was followed by Philemon Dickerson, who in 1836 was superseded by William Pennington.

Failing to be re-elected governor in 1829, Mr. Williamson returned to the bar, and was soon in full practice. He was associated with George Wood in the arguments before Judges Ewing and Drake, sitting for the chancellor, in the great cause between the two branches of the Society of Friends. When his political friends had a majority of the legislature in 1832, and it became necessary to choose a new chief justice of the supreme court, in consequence of the death of Ewing, he could undoubtedly have received the appointment, had he consented to be a candidate. I had myself a conversation with him for the purpose of endeavoring to induce him to do so, but he peremptorily declined, saying, that he had for so many years directed his attention exclusively to the rules of equity, that he could not meet the expectations of his friends, in a situation so entirely different, without a severity of application which at his time of life (being now aged about sixty-five), he did not dare to undertake, and that he much preferred for the remainder of his life continuing at the bar.

In the years 1831 and 1832 he was elected a member of the council for Essex County. In 1844 he was chosen a member of the convention which framed a new constitution for this State, and was unanimously elected the president of that body. No other person was nominated. For some time he presided with great acceptance, but his health failed him, and he was obliged to leave, and finally to resign the presidency before the proceedings were closed. Before the close of the year he died at the age of seventy-seven years. Benjamin Williamson, chancellor from 1852 to 1859, is a son.

The three portraits that adorn the room of the supreme court at Trenton, are those of Richard Stockton, Isaac H. Williamson, and George Wood; and no three men who have flourished at the bar in the United States, were better entitled to such a distinction.

The honorary degree of LL. D. was conferred on him by the trustees of Princeton, not otherwise important than as a mark of respect from an intelligent body of men, over whom he had presided twelve years.

This reminiscence of Governor Williamson, who died more than twenty-five years ago, reminds me of the many pleasant (as well as tedious) hours lawyers spent in Trenton, during the earlier years of my practice. I frequently, as many others did, travelled in my own conveyance, spending parts of two days on the road each way, and seldom going home until the business of the term was through. There being no branch court, calls for common business were made during the first hour of Tuesday and Wednesday, and after opinions were delivered on Thursday, continuously until the list was finished. If contested ques-

tions arose, as they often did, a junior counsel could not move even unlitigated cases, until the second week ; and if, relying on this, he was not on hand at the beginning, he was liable to lose his opportunity altogether. This undoubtedly produced greater sociability and a stronger *esprit du corps* among the bar than exists now. We could not go home every afternoon and return in the morning, as many do now, nor did we think of going each man to his separate room, but commonly passed our evenings together in social converse, clubbing the drink that was sometimes too freely used at the table, or on other occasions. It was said that some sat up late at cards, gambling pretty badly ; but for myself I can say that during more than fifty years, I have never seen a pack of cards in a tavern at Trenton.

Well do I remember how delighted we were to get Governor Williamson with us, commonly at the Rising Sun Tavern, where the American Hotel stands, and how genial and pleasant he was. We were indeed sometimes like school-boys on a holiday, and killed time by all the means our imaginations could suggest. Leaders in this, were Nathaniel Saxton, the chancery reporter, generally called Natty ; and Smith Scudder of Elizabethtown, whose sobriquet was "Doctor." Songs were sung, old stories revived, and flashes of wit sparkled ; each one deeming it a duty to contribute as well as he could to the general amusement. We did not indulge in "high jinks," like Counselor Pleydell in Scott's amusing pages ; but we were often very merry without dissipation, and no one seemed to enjoy such occasional relaxations more than "his excellency" the chancellor, usually very grave and sedate.

PETER D. VROOM was governor and chancellor six years, and is now the oldest counselor at the bar of the supreme court. He was born in the township of Hillsborough, County of Somerset, December 12, 1791, and was the youngest son of Colonel Peter D. Vroom, an old and much respected citizen of Somerset. Mr. Stockton used to call him Mr. Frome, in accordance with the Dutch pronunciation of his name.

Colonel Vroom, as I learn from an account of him, written by Rev. Dr. Messler, was born in 1745. Early in life he lived in New York, whence he came to reside on the Raritan, near the junction of the north and south branches, living there until his death in 1831. He married Elsie Bogert, like himself of Dutch descent. He was one of the first to raise a military company, at the commencement of the Revolutionary War, in which he served as lieutenant and captain, and was appointed major in 1777, and afterwards lieutenant-colonel. He led a company at the battle of Germantown, and was in service during the war. He occupied during his life almost every office of trust in the county: sheriff, clerk of the pleas, and justice of the peace; and was a member for many years either of the Assembly or council. He was also an elder in the Dutch Reformed Church, to which he belonged, and in all the relations he thus sustained was highly esteemed, living until the son who bore his name had become governor; hence the latter was long designated and known as Peter D. Vroom, junior.

Governor Vroom prepared for college at the Somerville Academy, and in 1806 entered the junior class of Columbia College in New York, graduating in 1808.

He then became a student with George McDonald of Somerville, and was licensed as an attorney in May, 1813, two years my senior. He became a counselor in 1816, and was called to be a sergeant in 1828.

He first opened an office as a lawyer at Schooley's Mountain, in Morris County, where he remained about eighteen months, from whence he went to Hackettstown, then in Sussex County, where he remained about two years, removing from that place to Flemington, and enjoying during all this time, notwithstanding these repeated removals, quite as good a practice as is usually obtained by young lawyers. While residing here he married Miss Dumont, a daughter of Colonel Dumont of his native county, whose sister was the wife of Frederick Frelinghuysen. He was prosecutor of the pleas, by appointment of Attorney-general Frelinghuysen. My first knowledge of him grew out of a compliment paid to him by Chief Justice Kirkpatrick, so unusual from that quarter as to excite much remark. In the opinion pronounced in the case of *Kline vs. Ramsay*, 1 South. 141, he took occasion to refer to Mr. Vroom, as the counsel for the defendant, "whose discernment and accuracy is inferior to none of his standing at the bar." In 1820 he returned to his native county, and resided in Somerville more than twenty years. Successful as he has been and always honored, I have heard him speak of his frequent changes as a mistake.

Up to 1824 he had taken but little part in political affairs, having been indeed, as a Federalist, attached to the party hopelessly in the minority. In this year he espoused with considerable earnestness the support of General Jackson, in common with his father and many of the leading Federalists of the State, who ob-

jected to Adams for having deserted their party and joined that of Mr. Jefferson. They were also strongly attracted to his support, by the fact, first brought out by his democratic opposers to injure his popularity with that party, that in 1816 he had addressed a letter to President Monroe, in which he wrote, "Everything depends on the selection of your ministry. In every selection, party and party feelings should be avoided. Now is the time to exterminate that monster called party spirit. By selecting characters most conspicuous for their probity, virtue, capacity, and firmness, without any regard to party, you will go far to, if not entirely, eradicate those feelings which on former occasions threw so many obstacles in the way of government, and perhaps have the pleasure and honor of uniting a people heretofore politically divided. The chief magistrate of a great and powerful nation should never indulge in party feelings. His conduct should be liberal and disinterested, always bearing in mind that he acts for the whole, and not a part of the community."

He represented Somerset County in the house of Assembly in 1826, 1827, and 1829. The majority of Jackson men in the legislature of 1829 was very large, and it was therefore to be expected that they would choose a governor from their own party. General Wall, who was first selected, having resisted the importunities of his friends and persistently refused to accept the office, Mr. Vroom was induced very reluctantly to take the place. The governor being at this time chancellor and ordinary, the field for selection was small. I believe the only other person named for the situation on this occasion, was William N. Jeffers, who had very slender claims to such a trust.

Mr. Vroom was acknowledged, even by those opposed to him politically, to be a worthy successor to Isaac H. Williamson ;— I cannot say equal to him as a lawyer, but fairly entitled to be ranked next to him in ability, and unexceptionable in character. He was reëlected in 1830 and 1831, but the next year the friends of Mr. Southard carried the State, and he was displaced ; but was again elected in 1833, 1834, and 1835. In 1836 his health having become impaired, he declined to accept the office again.

The cases in the court of chancery decided by Governor Vroom were the first that were reported. They are found in Saxton's Reports and in 2 Green's Chancery Reports. The opinions of Chancellor Williamson, but few of which have been printed, first gave character to the court, and, especially in questions relating to mortgages, have been implicitly followed. Those of Governor Vroom, following in his steps, have been still more valuable, because more known. Upon the questions decided by him, they remain for the most part undisputed precedents.

Upon retiring from office he resumed his practice in Somerville. Early in 1837, President Van Buren appointed him one of the three commissioners selected to adjust claims to reserves of land, under the treaty made with the Choctaw Indians ; this appointment he accepted, and was absent in Mississippi several months.

In 1838 he was elected a member of Congress by a fair majority of votes, although, in consequence of irregularities in some of the returns, he failed to receive the governor's commission. This election was the occasion of a protracted warfare between the two parties, known as the "broad seal war." That he was fairly elected by a clear majority of votes, was clearly

shown after a protracted and vexatious examination of witnesses, and in the end was not disputed. But the great controversy was, whether his vote and the votes of his colleagues should be received in the election of a speaker, parties being so nearly divided that it depended upon this decision which should prevail in organizing the house. It appearing, by undisputed documents produced to Congress, that the governor's commission had been awarded to persons who in point of fact did not receive a plurality of the votes cast, it was decided, and I think very properly, that those thus shown to be elected should be placed on the roll and be entitled to vote. The testimony of the "broad seal" of the State, was at best only *prima facie* evidence; and being shown to have been affixed upon evidence that was imperfect, was rightly set aside, as soon as it was proved by authentic returns to be erroneous. The decision of the governor and his council as the law then stood was, I think, right; but that Congress had a right to look behind his commission was equally clear; and that they were entirely justifiable in doing this, under the circumstances, before they allowed the house to be organized, is I think equally plain.

Soon after his service in Congress he removed to Trenton, where he has since had his residence. Having lost his first wife, he about this time married a daughter of General Wall. In 1844 he was elected a delegate to the constitutional convention from his native county, although not a resident there. He was chairman of the committee on the legislative department, and took an active part in all the discussions and proceedings of the convention. His strong conservative propensities induced him to resist and to aid

in defeating some changes in the constitution, especially in regard to the judiciary, which I have always thought would have been beneficial.

In 1846 he acted with Henry W. Green, Stacy G. Potts, and William L. Dayton in a thorough revision of the statutes of the State, to adapt these to the new constitution, and to consolidate the numerous supplements. This work was well performed, and produced an excellent body of laws, without disturbing the foundations so well laid by Governor Paterson. Upon the expiration of the term for which Chief Justice Green had been appointed, Governor Fort nominated Mr. Vroom as his successor, and the appointment was forthwith confirmed by the senate. He peremptorily declined accepting the office. Indeed it was always understood that this result was anticipated, and that the governor and some others of the democratic party were quite willing to have a fair excuse for reappointing the chief justice, who had given great satisfaction as the head of the supreme court, and the result was, that, after the nomination of Alexander Wurtz, who also declined, Green was reinstated.

Several of the leading federal gentlemen of New Jersey who supported General Jackson, fell back into the ranks of the opposition when his party became identified with the Democrats, while some of the latter party who had preferred Mr. Adams, declined to act with the Whigs under the lead of Mr. Clay. Mr. Vroom has been a steadfast adherent of the democratic party. In 1862 he was a presidential elector and cast his vote for Mr. Pierce.

In 1853 Mr. Vroom was offered the mission to Prussia, and accepting the appointment he went to Berlin in the fall of that year and remained until 1857, when

he was recalled at his own request, and resumed his profession as an advocate, which he has ever since continued, confining his business mainly to arguments in the higher courts. His services as minister were of no special importance; but although ignorant of the German language, he gave full satisfaction to the government he represented, and to that of Prussia. The principal subject to which his attention was directed, and which formed the burden of his correspondence, was the claim of the subjects of Prussia who had emigrated to America and become citizens of the United States, and who were led by business or pleasure to return to their native country, to be protected against the claim of the Prussian government to require them to perform the military duty imposed by the laws of Prussia. The American government had adopted the sound principle of international law, that naturalized citizens while resident in America, or elsewhere outside of the country from whence they emigrated, would be protected the same as natural born citizens; yet if they chose voluntarily to return to their original domicil, they thereby placed themselves in the power of the laws they had broken, and could not be protected against the consequences of their own unlawful acts, committed before they had any claim upon the government of the United States, and whilst yet Prussian subjects. But it was very difficult to make those who thus became subjected to a very severe military service, or to serious punishments, understand this principle, and in several cases Mr. Vroom was subjected to reiterated complaints, and attempts were made to stir up popular censure at home. But he maintained the positions required by his instructions with equal firmness and good temper, ap-

pealing in every proper case, and often with success, to the forbearance and clemency of the Prussian government.

He was one of the candidates on the electoral ticket adopted in 1860 by the friends of Breckinridge and Lane; but in the confusion produced by the Southern Democrats, in furtherance of their disunion purposes, he was defeated, — a result he probably did not regret; because while resolutely opposed to the measures of the northern abolitionists, so certain to end in producing a civil war, he was equally opposed to the secession doctrines of the slaveholders.

The alarming aspect of affairs produced by the success of Lincoln, by means of the fusion of a large proportion of the Whigs who had resisted the nomination of Fremont, with the Republicans, occasioned a call, originating with the legislature of Virginia, for the appointment of commissioners by all the States, to agree, if practicable, upon some suitable adjustment of the unhappy controversies, which threatened to dissolve the Union. Nine gentlemen of the highest character were appointed to represent New Jersey, among whom was Mr. Vroom. This conference, in which twenty States were represented, met at Washington, February 4, 1861, and continued in session until the 23d of that month, after having proposed certain amendments of the constitution, by such divided votes as gave no promise of restoring peace. Mr. Vroom, (and not Randolph, as is erroneously stated by Chittenden in his report of the proceedings) was a member of the committee, composed of one from each State, to whom was referred the resolutions of the State of New Jersey, and the other States represented, and all propositions for the adjustment of existing difficulties be-

tween States, with authority to report what they might deem right, necessary, and proper to restore harmony and preserve the Union.

I learn by a communication from William C. Alexander, one of the commissioners, that the committee held numerous and protracted sessions, and it was not until the 15th of February that Mr. Guthrie, on behalf of a majority of the committee, submitted a report. "The meetings of this committee were numerous and protracted, and the labors of the members arduous and exhausting; and Governor Vroom was a punctual, faithful, and patient member of the committee. The New Jersey delegates were in the habit of assembling after each meeting, and receiving from him a full account of the proceedings and of the discussions which had taken place. These statements were made with that clearness and precision so characteristic of Governor Vroom, and I am bound to add that in all our conferences and consultations we found him ever, and eminently, calm, sagacious, and patriotic. Our intercourse with him during the protracted session of the conference was exceedingly pleasant. He was uniformly kind, gentle, and acceptable, and his colleagues naturally and justly regarded him as the Nestor of the delegation, both as regards age and wisdom." .

I well recollect meeting Governor Olden at Trenton, while this commission was in session, and asking him with much anxiety what he considered the prospect; that he answered me by expressing a confident expectation that their labors would result in restoring peace; and that I replied, "Governor Olden, I am sorry to be obliged to say I have no such hope; your party (and by this expression I mean nothing offensive, for I believe if the Democrats were placed in the

same situation they would act in the same way) are too intent to gather the spoils of their victory to care for peace." That Governor Olden (who was one of our commissioners) had and would faithfully labor to procure peace I had no doubt; as faithfully as he labored in fulfillment of his duties as governor of the State, to aid in prosecuting the war, when it could no longer be avoided.

The causes which occasioned the failure of all propositions for peace can be perhaps best stated in Governor Vroom's own language, as expressed in an address to the voters of New Jersey, drawn up by him in 1862: "Radical politicians everywhere opposed the adjustment. The union men in the border States were earnest in their entreaties. They foresaw and foretold with almost prophetic distinctness what would be the results of a failure. The Crittenden resolutions, the propositions of the peace convention,—either, if agreed to by Congress, might have saved the country. But secessionists in the South opposed them. The radicals of the North and East opposed them. The great republican party, everywhere, with some honorable exceptions, were unwilling to abandon their platform. They insisted it should be carried out to the letter, no matter what might be the consequences. Some assured the people that there was no danger; that everything would be quieted in thirty days, or a few weeks; others did not hesitate to say that blood-letting would be of service to the nation."

This address of 1862 discloses fully the grounds upon which Mr. Vroom, and those agreeing with him, thought it their duty to oppose the measures of the Lincoln administration. He emphatically disclaimed any concurrence in the doctrine of secession, declaring

it to be a political heresy which finds no place in the constitution and subversive of the principles of our government. But he insisted that the only legitimate object of the war was, as Congress had resolved, to suppress rebellion, establish the authority of the constitution, and restore the Union ; and that this being accomplished it should cease. It was fast assuming the character of a war for the abolition of slavery. And what was far more important even than this, the constitution was disregarded and treated as if no longer binding. The President had gone further than any sovereign of Great Britain had ventured to go, since the Revolution of 1688, in claiming the power to nullify the laws, and by his own authority to suspend the privilege of the great writ of *habeas corpus*. This writ had never before been suspended even by the Congress ; but now, under the sanction of the highest law officer of the government, it had been suspended by a mere executive fiat.

Looking back now, after the fierce excitements of the season of peril through which we passed during four years of a terrible civil war have nearly or quite subsided, we cannot fail to see the extent to which the minds of men on both sides of the conflict were thrown off their right balance. The right of a State to secede from the Union, was firmly believed in by very intelligent and worthy citizens of the Southern States ; while at the North, the seeming necessity of the case, induced able lawyers and citizens to regard the Constitution of the Union as virtually superseded. Martial law was formally proclaimed even in New Jersey, and officers called provost-marshals invested with the arbitrary power of arresting and imprisoning peaceable citizens who were bold enough openly to

express their honest opinions. That stern necessity may have justified the arrest of those members of the legislature of Maryland, who were prepared to take measures for hastily declaring that State and the District of Columbia out of the Union, and thereby enabling the adherents of the Southern Confederacy to seize the public offices at Washington, and deprive the President of the power to fulfill his duties, has always been conceded by many of the prominent Democrats of New Jersey, and has never been doubted by me. But arbitrarily to suspend the most important functions of the judiciary in all the States, and to claim the right to do this as a necessary war power of the commander-in-chief of the military forces, was a stretch of power not to be excused. Happily the popular disapprobation of these tyrannical measures was so plainly expressed by the result of the elections in many of the States in 1862, that they were not long persisted in, and President Lincoln in one of his published letters expressed his willingness to follow the indications of the public sentiment. The supreme court has also held the seizure and trial of citizens not connected with nor within the lines of the army by a military commission to be in conflict with the constitution, and altogether illegal and void. Nothing indeed seems to be more important to the safe action of our republican government, than the continued existence of an opposition party, under the lead of men firm enough to resist the first beginning of oppression, and wise enough to confine that opposition to peaceable and reasonable measures.

The measures adopted for raising an army by means of a compulsory draft, were believed by many of our best and most intelligent citizens to be in conflict

with the constitution. Similar measures, when proposed by the democratic administration for carrying on the war against Great Britain in 1814, had been declared unconstitutional by a very large majority of the legislature of Connecticut, and were so fiercely assailed by the whole federal party of that day as to be abandoned. So strong an opposition to the enforcement of the draft was manifested in Somerset County, that there seemed to be great danger of forcible resistance. Under these circumstances Mr. Vroom was induced to address a large assembly of the people of that county in July, 1863. His speech on that occasion has been always regarded by those who heard it, as distinguished for eloquence and force; and his success in calming the passions of an excited people, and in inducing them to submit quietly to the enforcement of a most obnoxious law, until it should be declared unconstitutional by the proper judicial tribunal, proved his power as a public speaker, and the regard still entertained for him by those from whom he had been so long separated.

This speech was but imperfectly reported, but it attracted very deserved attention, and its influence was not confined to the county in which it was delivered. After referring to the right of free discussion, and to the war as a calamity he believed might have been prevented, and to what he deemed the improper mode in which it was conducted, he asked "What then are we to do, in the situation in which we find ourselves placed? Let us resolve that this country, in its whole length and breadth, is our country, and that we will serve it if we can. At a time like this every man's heart must go forth, earnestly and devoutly, for the adoption and success of such measures as will tend

to restore our Union, and give us the blessings of the free government left us by our fathers. In this we are all interested. We have all a stake in the hedge which it is our duty to guard against any infraction. We must abide by the constitution ; it provides for declaring war and supporting armies, and for calling out the militia, and no powers not given by it can be rightfully exercised by rulers or people. The doctrine of necessity, the favorite doctrine of the hour, has no place in it, and is not to be tolerated.

“ We must abide by the laws, when duly made ; this has always been a principle of the democratic creed, and I address myself to a law-loving people. We are not called upon to play the hypocrite and sing the praises of impolitic or bad laws, but we are to abide by them while they are laws. We may believe them to be unjust and unconstitutional ; but in regard to their constitutionality we are not the judges. We are the people upon whom they are to operate, and who are to obey them. A judiciary has been provided to determine their constitutionality ; and that is our protection — it is the constitutional shield thrown around our rights.”

Mr. Vroom labored earnestly in support of General McClellan for the presidency at the election of 1864, and contributed greatly to his success in New Jersey. McClellan perhaps more nearly represented the great majority of the Democrats in this State, than any other person then proposed as a candidate for their suffrages. He had been an earnest and faithful opponent of secession, and, as the commander of the army, had carried on the war in the true spirit of a patriotic general ; and there was a deep feeling that his great services had been rewarded only by cruel disparagement and base desertion. Could his party have pre-

vailed in the United States, there is every reason to believe that not only would a safe and honorable peace have been obtained, but that the integrity of our constitution would have been maintained and the government administered in its true spirit.

Opinions may differ in regard to the military capacity of General McClellan ; but it is certain, that while he had the nominal command of the army of the Potomac he had no fair opportunity of disclosing his true character as a general. As has been so forcibly and truly stated by Lord Macaulay, no general ever succeeded who was subject to the control of a military council. And he was subject to a control far worse than any military council ever could be. Newspapers exercising a powerful influence, not only over the public mind, but over the mind of the President and his advisers, were shouting, "On to Richmond," regardless of preparation or of adequate force ; other generals, jealous of his promotion, were busy in urging complaints ; and those having authority to direct his measures, themselves without a plan, were constantly interfering with his measures and rendering success impossible. But the best test of his true character was his conduct when he was unjustly displaced and the command devolved on others, inferior to him in all respects. When they ignominiously failed, and all was terror and alarm, he unhesitatingly resumed the command, made the best of the difficulties thrown in his way, and led the army to a hard won victory. He then quietly retired, and bore, with true Christian magnanimity, contumely and abuse. Never, by one word or action, did he depart from the line of conduct with which he commenced his career.

Had a majority of the people elected and supported

McClellan, we might have been saved the great crime and the great calamity of having a president assassinated, and the public mind, already sufficiently inflamed, thrown into a paroxysm of passion natural enough, but disastrous in its influence. We should have been spared a president capable of commencing his duties by disgracing himself in the eyes of the world, elected by men who had but one sentiment in common with him, and who were ready, not only to dissent from his most important recommendations, but to brand him as a criminal and to attempt to degrade him from his office, because he differed from them in regard to measures at best of very doubtful propriety, and interpreted obscure statutes in a way they did not approve.

The war between the North and the South, lamentable as it was, resulted in the complete overthrow of slavery, and thus, in the providence of God, a great good came out of a great evil. But no such compensation can be hoped for, from measures of reconstruction which have not only materially altered, and in some aspects, it is to be feared, for the worse, our old constitution; but which have been adopted in contravention of plain provisions that remain. When it was first proposed to treat the Southern States as conquered provinces, the proposition found little favor, even with leading Republicans. But such extreme and dangerous men as Thaddeus Stevens and Benjamin F. Butler were suffered to rule. The result has been a series of measures which have produced state governments that are a reproach to our country, and which threaten permanently to alienate the best citizens from the government of the Union. Mr. Vroom has been constant in his opposition to all these meas-

ures. In 1868 he was chosen one of the presidential electors, and aided in casting the vote of the State for Horatio Seymour.

Upon the death of his eldest son, who was the state reporter of the decisions of the supreme court, he was induced to accept that office, and still holds it, having published four volumes of Reports. He has also, during several years, held the appointment of one of the commissioners of the sinking fund.

Enjoying the instruction of faithful Christian parents, he early in life united himself with the Dutch Reformed Church, and was during many years a ruling elder. Not only of full Dutch descent, but a partaker of that conservative character generally attributed to those of that race, he was a zealous and earnest advocate for the retention of the word "Dutch" in the name of his church.

An able and eloquent speaker on the platform, he has frequently been called on to make addresses to the graduates of Rutgers College, of which he is a trustee, and to the American Colonization and Bible Societies, of which he is a vice-president. In 1850 the College of New Jersey conferred on him the degree of LL. D.

Mr. Vroom stands at the head of the bar of New Jersey, and now, at the great age of nearly fourscore, continues to practice his profession. An argument which he recently made before the court of errors and appeals, on the constitutional question as to the power of the legislature to allow an appeal from a decree of the prerogative court, has been spoken of as equal to one of his best efforts in the days of his youthful vigor.

CHAPTER VII.

GOVERNORS I HAVE KNOWN.

SAMUEL L. SOUTHARD. ELIAS P. SEELEY.

SAMUEL L. SOUTHARD, governor and chancellor in 1832, was born at Baskingridge, June 9, 1787. His father, Henry Southard, was from Long Island, and removed to New Jersey early in life. He had only a common English education, and started in life as a day laborer; but by untiring industry and saving, managed to purchase a farm, and was for many years a justice of the peace, and several years a member of the Assembly of New Jersey. At the election for members of Congress, in the fall of 1800, he was elected by the republican party, a representative from New Jersey, and was successively reelected until 1810. In 1814 he was again elected, and continued to be reelected until 1820, closing his congressional career on the 3d of March, 1821. His son took his seat in the senate, in February, and they were both members of the joint committee of the two houses, which reported what was then called the Missouri Compromise. He died June 2, 1842, a few days before the death of his son.

It was said that when Samuel was about eleven years of age, his mother struck him for some impropriety of conduct; becoming enraged, he left his home with the intention of not returning. He had not proceeded far before he began to reflect upon the rashness and wickedness of his conduct, and seating

himself by the way-side, he wept long and bitterly, and rose up to return home, beg his mother's forgiveness, and promise her that his temper should never again become his master. This interesting incident, which seems to have been derived from his own statement, I can readily accept as authentic, because it agrees so well with my own observation of his disposition. He undoubtedly possessed a warm and susceptible temperament; and although he too often yielded to temptation, he was capable of great self-control, and sometimes was called upon to exercise it, not only amid scenes of political warfare, but on occasions of far more trying inflictions of private wrong and injury.

When about twelve years of age, he commenced the study of Latin, at a classical academy taught at Baskingridge by the Rev. Robert Finley, afterwards well known as the principal founder of the American Colonization Society. Here he enjoyed the tuition of an accomplished scholar, a thorough disciplinarian, a skillful teacher, and one particularly distinguished for his ability to awaken the interest of his pupils in what they were studying. He had a natural fondness for teaching, and gave his whole mind to the work. His influence with the scholars was increased by his sacred profession, and the uncommon power and unction which marked his efforts in the pulpit. And here, of more importance to him, perhaps, than the studies of the school, he enjoyed the fellowship of Theodore Frelinghuysen, not then, as he afterwards became, a devoted Christian, but a moral and amiable youth, beloved by his classmates, and exercising a salutary influence over his associates. The friendship here commenced, remained unbroken

through Mr. Southard's life. Joseph R. Ingersoll, of Philadelphia, George Chambers, of Pennsylvania, Phillip Lindsley (afterwards vice-president of Princeton and president of Nashville University), and Rev. Dr. Jacob Kirkpatrick, were also students with Southard at this school.

In September, 1802, he entered the junior class at Princeton, and in 1804, at the age of seventeen years and three months, took his degree with honor at that institution, in the same class with Frelinghuy-sen, Ingersoll, Kirkpatrick, and Lindsley, his fellow-students in the academy. Samuel Stanhope Smith, so distinguished for his polished manners, for his acquaintance with ancient and modern literature, and for eloquence as a preacher, was then the president of the college, and in full possession of his faculties. Rev. Dr. James Alexander, referring to him in his centennial address, in 1847, says: "A little later, we who first saw these shades in 1812, recall the venerable form of the president, as he laid aside the symbol of learned rule; beautiful and lordly in his decay; unsurpassed in our memory, for perfect gracefulness and a stateliness which had lost all that was once considered as pomp." And Southard himself, in an address before the alumni of the college, in 1832, says of him: "Of but one of them can I speak from observation and intercourse; and of him the impression remains too vivid with many of you to need that I should arouse it. Who that ever saw the dignified and gentle, graceful and manly person and manners of Smith, and has not the object still uneffaced upon his sense of vision? Who that has heard his polished and fervid eloquence, can have lost the impression upon his ear? Who that felt the influence of his be-

nevolence and piety, and does not still feel its action upon the heart ? Who that listened to the instructions of his learning, and the precepts of his wisdom, does not find his pantings after higher attainments in virtue and knowledge enlivened by the recollections ? ”

Soon after he left the college, Mr. Southard went to Mendham, Morris County, and taught a classical school. Proposing then to travel through the South, he went to Washington, where his father was a member of the house of representatives. He had there become intimate with Colonel John Taliaferro (pronounced Tolliver), for many years a member of Congress from Virginia, who applied to him to recommend a tutor to take charge of his sons and nephews. For many years before this time, and for years afterward, it was a common thing for wealthy Virginians to seek tutors educated at Princeton. As soon as young Mr. Southard arrived, the proposition was made to him to accept the situation, which he agreed to do, and to relinquish his plan of travel.

Accordingly, in the fall of 1805, he commenced his residence at Hagley, the plantation of Colonel Taliaferro, in King George’s County, a few miles from Fredericksburg, and remained an inmate of his family five years. He had generally eight pupils, two of them sons of the colonel, and the others were his nephews, or other relatives, and was accustomed to devote five days of the week to the duties of the situation as tutor. Soon he added to his other employments the study of the law, under the direction and with the aid of Judges Green and Brooks, of Fredericksburg. After the examination usual there, before judges in private, he was admitted to practice law in 1809.

It is not easy now fully to appreciate the advan-

tages enjoyed by an acceptable tutor in the family of a rich and cultivated planter of Virginia sixty years ago. One of his pupils, Major Lawrence Taliaferro, who recently died at his residence in Bedford, Pennsylvania, after having been for many years on the retired list of the United States Army, writes to me: "Southard was treated as a friend and a brother ; we loved him." Another pupil, James Monroe Taliaferro now of Stafford County, Virginia, writes : " It is impossible for me to do justice to one of the best men I ever met. Pure, gentle, affectionate, and talented, he needed no association to aid him, for his own virtues shone above the generality of men with exceeding brilliancy, and won for him a name and respect that is still green and flourishing in the memory of all who had the pleasure of his acquaintance. He was our guide, example, and teacher, and I shall never forget him ; and who could, with a heart to appreciate such noble traits as he possessed ?" Treated as the associate and friend of the family, and introduced to the society of the cultivated men and women with whom they had almost daily intercourse ; furnished with a horse, at all times at his disposal, and thus enabled to reciprocate the visits of neighboring families, a youth prepared for it as Mr. Southard had been, was afforded means of improvement in knowledge and manners, which could hardly be prized too highly.

The state of society among the better class of the planters of Virginia, now entirely changed, whether it shall prove to be for the better or the worse, was at that time very peculiar. Writing from Charlotte County in May, 1826, the Rev. Dr. J. W. Alexander describes that region as "a rich, fertile region, pro-

ducing great quantities of prime tobacco, and of course growing wealthy. The manners of the people are plain, frank, hospitable, and independent, proud of their Virginianism and all its peculiarities. I suppose that no set of people in the world live more at their ease, or indeed more luxuriously, so far as eating and drinking are concerned. No farmer would think of sitting down to dinner with less than four dishes of meat, or to breakfast without several different kinds of warm bread. It is, moreover, a moral country ; no gainbling, no dissipation, or frolicking."

Colonel Taliaferro was a relation of James Monroe, and enjoyed not only his acquaintance and fellowship, but was intimate also with Jefferson and Madison, and most of the other distinguished men of his time. His family circle, like that in which it was the good fortune of William Wirt to be admitted in the same vicinity, and which aided so much in forming his admirable character, as is stated by his biographer, furnished attractions both to old and young. His children and their associates drew around them many cheerful and happy companions. An elegant hospitality prevailed in his household, choice books were found in his library, or in the libraries of his immediate friends instructive and agreeable conversation enlivened his fireside. Hagley exhibited just such a combination of rare and pleasant appurtenances as are likely to make the best impressions upon the mind of an ingenuous and ambitious youth, and to inspire him with zeal in the cultivation of virtue and knowledge. Mr. Southard attracted the attention and won the affectionate regards of Mr. Monroe, and was accustomed frequently to visit him, and sometimes to spend several days with him at his residence in Loudon

County, some sixty miles or more from King George's. Among the inmates of his home at Hagley, was a ward of his patron, Miss Rebecca Harrow, daughter of a deceased minister of the Episcopal Church, originally from Ireland, whom he afterwards married; although it appears from some of his letters that he had long indulged a passion for a lady at Mendham.

A change in the society of Eastern Virginia began to manifest itself very plainly, several years before the recent rebellion. Much of the land was badly cultivated, and wealth diminished rather than increased. The rebellion hastened the decay. Hagley, I have been informed, is now a ruin. One of Mr. Southard's pupils writing to me, remarks: "We are a poor set hereabouts. Honors are sometimes dangerous; my services in the senate of Virginia for many years, has placed my neck under the congressional guillotine, and the war has left me a beggar on the earth, with a very large family."

Mr. Southard was licensed as an attorney by the supreme court of this State in 1811, and then took up his residence in Flemington, the county seat of Hunterdon County, where he built himself a house. He was married to Miss Harrow at Hagley, in June, 1812. He soon acquired a good practice, and was appointed prosecuting attorney of the county.

He first attracted attention, and took the place he was entitled by his talents and acquirements to fill, in an argument before the legislature of New Jersey, in January, 1815, in opposition to a petition presented by Livingston and Fulton to repeal a law of this State passed in 1813, granting to Aaron Ogden and Daniel Dod the exclusive privilege of using steamboats plying between New Jersey and New

York in the waters of New Jersey. This law was designed, and expressed on its face, the purpose of opposing the monopoly of running steamboats in the waters of New York, granted by that State to the first person who should succeed in constructing a boat to be propelled by steam, capable of passing through the water at the rate of six miles an hour, and which right was thus acquired by the success of Fulton's boat, constructed by him with the aid of Mr. Livingston. The celebrated Thomas Addis Emmet appeared as the advocate of Livingston and Fulton, Joseph Hopkinson being associated with Mr. Southard.

Fortunately we have a contemporary statement of the arguments in this case, in a "Letter to a Gentleman in Washington," understood to have been written by Lucius H. Stockton, Esq., to his brother Richard, then a member of Congress. Mr. Emmet made the opening address. Mr. Southard's answer is thus described:—

" His whole speech, which appeared to me to be delivered almost extempore, or with very short notes, to which he made no perceptible application, was clear, neat, ornate, fluent, and sententious, manifesting a capacity of intellect really gigantic. It was distinguished by a lucid order and arrangement, united with great precision and simplicity of eloquence, which, however, was very forcible, and rising to a high degree of excitement in certain parts, but particularly in the conclusion of his argument.

" Possessing that classical and ingenuous modesty usually accompanying the superiority of true literary merit, he has the seductive manner of an Attic elegance, easier to conceive than describe, which, irresistibly captivating the affections, insinuates itself into the minutest ligaments of the heart. It is, therefore, easy to observe an inexpressible elegance, grace, dignity, and force, exciting a peculiar interest in everything which he utters, and justly entitling him to the character of what is well expressed in the language of our

aboriginal inhabitants by ‘a beloved young man.’ Though I have been accustomed for many years to hear the most eminent men of our country, celebrated for the eloquence of the senate, forum, and pulpit, yet I can say with sincerity that, in my judgment, he was never exceeded by a man of any age, and rarely if ever equaled by a man of twenty-seven years old. His voice is clear, musical, and though not very strong, so distinct that you never fail to hear every word. On this occasion he so completely united the *suaviter in modo* with the *fortiter in re*, that he obtained the rare facility seldom enjoyed by us who tread the toilsome and thorny paths of forensic litigation, of perfectly satisfying his clients and gratifying his friends, without incurring the ire usually excited in adversaries. I am confident that in this great cause,—in which not to have been disgraced by a necessary comparison with Hopkinson, Emmet, and Ogden is an honor of no inferior grade,—he delivered a speech neither defective nor redundant, which created an indelible impression on his hearers, not to be erased while the love of brilliant genius, real eloquence, profound erudition, and manly patriotism remain to adorn and vivify the minds of Jerseymen. Although I very much regret the delusion under which I view him as laboring on the subject of politics, which, considering his pure, amiable, and irreproachable character, I must attribute to the early prejudices acquired under his parental roof, and his subsequent residence in a democratic part of Virginia, yet I sincerely wish he may be long continued as a blessing and ornament to his friends, family, and country.”

The state law so obnoxious to Livingston and Fulton was repealed by the legislature, notwithstanding the strenuous efforts of Colonel Ogden, his counsel, and friends ; and the result of the whole contest was very disastrous to that gentleman. But Mr. Southard was not only fortunate in being brought before the public in such an important and well-known controversy, in connection with such celebrated speakers, and in being able to maintain a respectable position among them, but also in having such a friendly reporter, whose account, although partaking of the somewhat exaggerated style of the eccentric writer, was exceedingly interesting, and was well received and generally

read at the time of its publication. His subsequent performances as an advocate and senator did not, as has sometimes happened in similar cases, prove that the praise so freely lavished was undeserved, but served rather to show that it was in the main deserved.

// At the succeeding election in Hunterdon County, Mr. Southard was elected a member of the Assembly, and Mahlon Dickerson, then one of the justices of the supreme court, being elected governor, Southard was immediately chosen by the joint meeting to succeed him in the court. The vote was twenty-nine for Southard, and twenty-four for Joseph McIlvaine, determined by the location of the members or by personal preferences, both of them belonging to the democratic party.

Mr. Southard sat as a judge five years, and was also the reporter of the decisions of the supreme court. Although his true place was not as a judge, he maintained a respectable standing, and had the confidence of the bar. His opinions, as reported, were well considered and happily expressed. One of them, pronounced soon after he took his seat on the bench (1 South, 339), is a good example of his style of writing.

Shortly after his appointment as justice of the supreme court, Mr. Southard removed his residence to Trenton; and it would seem that he was willing to have relinquished his place as judge and returned to his profession, having, in November, 1817, received twenty-six votes for the appointment of attorney-general against the twenty-seven which at that time elected Mr. Frelinghuysen. In 1820 a new revision of the Statutes of the State having been made,

he and Charles Ewing prepared it for publication, and superintended the printing. In the fall of that year he was elected one of the presidential electors, and had the pleasure of recording his vote for his friend Mr. Monroe, who was reëlected president, receiving every vote but one, a unanimity which has not happened in any other case.

I became personally acquainted with him when I was licensed as a counselor in 1818. In the fall of 1820 I was elected a member of Assembly from the County of Cumberland, on a union ticket formed in opposition to the regular democratic ticket, as an expression of adherence to the policy of President Monroe, which to a great extent ignored the old party disputes. So entirely had this spirit the ascendancy in the legislature of that year, that the principle was adopted and regularly acted upon, of allowing the representatives of each county to take the responsibility of making the county appointments without regard to party, the other members never interfering unless they disagreed. This policy was interrupted the next year; but the two succeeding years it was reinstated. Party politics had but little influence in the State until the success of Jackson in 1828.

The term of James J. Wilson, one of the senators from New Jersey, expired on the 3d of March, 1821, so that it became necessary to reëlect him or choose a successor, during the sitting of the legislature. Mr. Wilson was the editor and proprietor of the "Trenton True American," the organ of the democratic party, and had for nearly twenty years, in connection with Judge Rossell and a few others, controlled its management in the State. Unfortunately he had

within a few years become intemperate in his habits, a fact which was denied by his adherents, and which many of his friends were slow to believe, but which had become known to me and some others. Under these circumstances a number of those who had always been Democrats, including Pennington of Essex (a brother of the judge), determined, if it should be found practicable, to elect some other person. Upon canvassing the members of the two houses, it was found that a majority were of this opinion. When a regular preliminary meeting of those opposed to Wilson was held, John Rutherford, then residing near Newark, and Samuel L. Southard, were brought forward as the candidates. Having a decided preference myself for Mr. Southard, and believing it objectionable to select an eastern man (the other senator being Mahlon Dickerson, of Morris County), I insisted that West Jersey must have the preference, and this consideration induced a majority of those present to vote for Southard. When the joint meeting was held in November, he was elected by a vote of thirty in his favor, against twenty-four for Wilson.

In a few days after his election as senator, Mr. Southard resigned his office as justice of the supreme court, and Ford was chosen his successor. Mr. Wilson did not attend in the senate at its next meeting, and soon resigned. Southard was appointed to fill the vacancy, and took his seat February 16, 1821. Congress was then in the midst of the excitement growing out of the question of admitting Missouri as a State of the Union, which was resisted on account of two clauses in its constitution, one of which (sec. 26 of article 3d) directed that the legislature should prohibit the immigration of free negroes

into the State, and the other forbade the abolition of slavery. The house of representatives had, by a considerable majority, voted against admitting the State. On the 22d day of February, Mr. Clay moved in that house a resolution, "That a committee be appointed on the part of this house, jointly with such committee as may be appointed on the part of the senate, to consider and report to the senate and to the house whether it is expedient or not to make provision for the admission of Missouri into the Union, on the same footing as the original States, and for the due execution of the laws of the United States within Missouri; and if not, whether any other and what provision adapted to her actual condition ought to be made by law."

To this resolution Mr. James A. Hamilton must refer, in a statement which he makes in his recently published "Reminiscences" (page 443), given on the authority of Ogden Hoffman, son-in-law to S. to whom Southard related the facts. It is as follows:—

"Mr. Southard was a member of the senate of the United States, young and recent; Mr. Clay an old, distinguished, and influential member of the house of representatives, pending the agitation of that question which excited the deepest interest and anxiety in all parts of the country. Mr. Southard prepared resolutions, the identical ones afterward introduced and passed. He showed them to his political friends, Mr. Clay among others. They were approved, and it was agreed that Mr. Southard should, on a certain day, as soon as the morning business was over, present them to the senate. On the morning of that day, Southard being prepared to move those resolutions, received a message from Mr. Clay, requesting a meeting on the resolutions. Southard went there. Clay urged that it would be better that the resolutions should be brought forward in the house of representatives, and desired Mr. Southard to give him the resolutions, saying he would, with Mr. Southard's consent, bring something of the same kind forward in the house. Mr. Southard assented. Mr. Clay took the resolutions, and without

change in any respect whatever, offered the resolutions in the house. They were carried in both houses. The question was settled; the agitation ceased. Mr. Clay has had from that time the whole merit of that measure. He never has given to Mr. Southard the credit of any part."

Mr. Southard was one of the committee of the senate, and Mr. Clay was at the head of the house committee. On the 26th of February, the latter reported the following resolutions, which, being adopted by a majority of both houses, and assented to by the legislature of Missouri, ended the struggle. It would seem from the tenor of Mr. Hamilton's statement, that this was also drafted by Mr. Southard.

"Resolved, That Missouri shall be admitted into this Union on an equal footing with the original States in all respects whatever, upon the fundamental condition that the fourth clause of the twenty-sixth section of the third article of the constitution submitted on the part of said State to Congress, shall never be construed to authorize the passage of any law, and that no law shall be passed in conformity thereto, by which any citizen of either of the States in this Union shall be excluded from the enjoyment of any of the privileges and immunities to which such citizen is entitled under the Constitution of the United States; provided that the legislature of the said State by a solemn public act, shall declare the assent of the said State to the said fundamental condition, and shall transmit to the President of the United States, on or before the fourth Monday in November next, an authentic copy of the said act; upon the receipt whereof, the President, by proclamation, shall announce the fact; whereupon and without any further proceedings on the part of Congress, the admission of the said State into this Union shall be considered as complete."

At the session of Congress commencing in December, 1821, Mr. Southard spoke on several occasions, but made no special effort to attract attention. In a letter to me, written during the winter session of 1822-23, he refers to various subjects, and among others, to a speech he had made on a bill before the

senate respecting imprisonment for debt. He remarks : "The editor of the 'National Intelligencer' told me he intended to publish my remarks. I have no ambition, however, to see myself in print, and should be quite willing he would let me alone."

In this letter he refers to the question of the next president, and says : "My objections to Adams, Clay, and Crawford, are the same which you mention, and I have others which you have not mentioned ; but I do not coincide in the belief that Mr. Calhoun is out of the question ; he seems to me quite as likely to succeed as any one of the others." His preference for Mr. Calhoun continued to be expressed, until near the election of Mr. Adams. It must be remembered that this was while Mr. Calhoun was Secretary of War, a decided supporter of measures of internal improvement, and before, as Mr. Webster in his great speech in answer to Hayne expressed it, "that star in its ascension veered off in an unexpected direction." He had not then advanced those ultra state right doctrines which afterwards did so much mischief, but was the favorite of "Young America," as well in the North as South.

In a letter addressed to me, from Washington, by Richard S. Coxe, Esq., who had recently removed from New Jersey, and who was for some years a leading lawyer there, dated March 2, 1823, he remarks : "You have been more acquainted with Southard than I ever was, until I came here ; but I have found him one of the very finest fellows I ever knew. Liberal in his principles and feelings, high-minded and honorable, and in his conduct towards myself as earnest and kind as if I had been his brother. In one respect, I have found him very different from what I

had been led to believe of him. He is as thorough a Jerseyman as any you have ever met with. I have had the pleasure of spending many pleasant hours with him and Holcombe this winter. They are both great favorites here ; but I am inclined to think that Southard has more weight here than all the residue of the Jersey delegation."

A subsequent letter, dated March 31, 1823, remarks: "I understand to-day that Mr. Thompson (Smith Thompson, Secretary of the Navy) has not positively determined whether or not to accept the proffered appointment of a seat on the bench. It will probably be determined before many days. Should he accept, his present situation will unquestionably be offered to our friend Southard. I trust he will make no difficulty about it, but come among us, and live where he is much beloved and respected. I am in hopes Jersey is to hold up her head again, for I am sure she has within her men of as much talent as any State in the Union, in proportion to her numbers, and until I came here I had no idea how dear all her interests are to me."

While this letter is before me, it may interest others, as it certainly does me, if I quote from it, the writer's remarks upon those he had heard of the then bar of the supreme court. He was a well educated lawyer, of good literary taste and culture, and writes the first impressions, and perhaps somewhat hasty, but in the main just conclusions of a young man. Webster had not then become so well known as a great lawyer and orator as he afterwards was, and in ordinary cases never appeared to great advantage.

"The bar, though able, is different from what I had anticipated.

I candidly think that causes are, upon the average, argued with as much ability and learning at the bar of our supreme court at Trenton as at Washington. Take him altogether, I consider Sergeant as the first man here ; he unites sound learning, great industry, and an agreeable elocution, in a higher degree than any others. Emmet is perhaps his equal, but he possesses more of the vivacity of manner and declamation ; the feeling he shows seems to flow from his interest for his clients ; Sergeant's from his desire to obtain a just decision. You can better understand the whole of this distinction than any language can explain it. Webster is able, ingenious, and learned, very acute, and possessed of a logical mind ; but he seems to make the argument of a cause a mere matter of heartless business ; he is dry as tinder, awkward in his manner, by no means prepossessing in his appearance, and I think would argue with as much feeling if he was discussing the right of property in a rusty nail, as if the salvation of the universe hung upon the cause. Harper is too verbose to be either very agreeable or very powerful. Wirt is more argumentative than declamatory ; but he seems incapable of any great continuity of argument ; he argues to gain his point rather than his cause. Clay seems to think that Mr. C. must make a handsome speech, while he probably never had a glimpse of what beauty consisted in, for he has no delicacy of taste in anything. Jones has every natural talent in such perfection that he never will be half as great as if he had a smaller portion of it."

Probably the comment on Mr. Clay will strike readers at the present day as most wanting in just appreciation of his talents ; but it must be remembered that he was then a leading Democrat ; Mr. Coxe had always been a Federalist. He did not rank Mr. Clay any lower as a lawyer than I have heard him placed by Judge Washington and Richard Stockton.

A letter from Mr. Southard, dated August 23d, 1823, is as follows : " My dear sir: Mr. Monroe has requested me to accept the secretaryship of the navy. I see many difficulties before me in doing it. May I beg of you as a personal friend, to tell me what is best ; you know as well or better than myself. In great haste, yours, etc."

Of course I advised him, as I supposed he wished, and as I certainly thought right for him and right for the country, that he should accept the position. I had not then heard what I was afterwards told, that before his election as senator, he had been assured by Mr. Monroe, that if he should obtain a seat in the senate, and a suitable opportunity should offer, he would place him in his cabinet. It was said that one of his friends, to whom he wrote a similar letter to that addressed to me, wrote to him for answer, — I suppose, however, more in jest than in earnest: "No. Stick to your law and to politics, about which you know something; but let alone the navy, about which you know nothing." It may indeed seem to some persons, not very well acquainted with the workings of our government, that a lawyer is not the most likely person to make a satisfactory secretary of navy. But I believe experience has shown that this is an error. A large majority of those who have held that office have been educated as lawyers, and those of a different class have for the most part proved failures. It is certain that Mr. Southard so managed his department as to entirely satisfy the two presidents under whom he acted, and as to gain the respect of the officers of the navy who were subject to his orders. His devotion to the best interests of that department of the public service was untiring, and his success in managing it was generally acknowledged.

When John Quincy Adams was elected President, and formed his cabinet about eighteen months after Mr. Southard had been made secretary of the navy, there were, as is usual in such cases, many speculations and many intrigues relating to his place. Mr.

Clay had made the mistake so fatal to his success as an aspirant for the presidency, of accepting the office of secretary of state, then supposed to be in the right line of the succession, after he had by his vote and influence aided in electing Adams, in preference to Jackson, who had obtained a plurality of the electoral votes, and whose popularity proved so irresistible. He was naturally anxious that his associates in the cabinet should be not merely men fit for their offices, but politicians who could command an influential popular vote; and it was well understood he was desirous that Mr. Southard should give place to some stronger man. But Mr. Adams declined to be governed by such motives. Probably no president since the days of Washington has endeavored to regard the fitness of the person appointed, for his station, so exclusively as Mr. Adams. He declined to remove Mr. Southard, and declined also to appoint William Henry Harrison Commander-in-chief of the army, as Mr. Clay wished, conferring the appointment on General Macomb, as entitled to it by seniority of rank. How far Mr. Southard was acquainted at the time with the course of Mr. Clay in this matter, I do not know. He spoke and wrote of him to me as if he had his entire confidence. In a letter dated in January, 1828, he writes, "I have been taught by my intercourse with him, to place a high estimate on his talents and worth." Subsequently he was forced to the conclusion that he could not reckon him among his friends.

From the election of Mr. Monroe, in 1816, to the election of Jackson, in 1828, the political relations of the men taking an active part in party proceedings assumed a new shape. The old Federalists were utterly

dispirited and ceased to act as a party. Many of the Democrats were tired of the bitter conflicts through which they had passed, and were ready to meet the overtures of their opponents, and to enjoy peace. Mr. Monroe belonged to this party, and in 1820 was reëlected unanimously. There were, however, still many of the Democrats who for various reasons did not sympathize with this feeling. At the election for his successor in 1824, the old party organizations were powerless, and new ones had not become so far consolidated as to exercise much influence. The electoral votes were divided between Jackson, Adams, Crawford, and Clay; Mr. Calhoun receiving nearly all the votes as vice-president, of those who voted for Jackson and Adams, a large majority of the whole. And so confused were the prevailing political opinions, that both Jackson and Adams were voted for by some as Democrats and by others as substantially Federalists. As a general rule, those Federalists who had been special admirers of General Hamilton voted for Jackson, considering Mr. Adams as a deserter. The old and more earnest Democrats in Virginia and elsewhere were for Crawford, but his ill-health and other circumstances put him behind. When it was ascertained that the election would devolve on Congress, which body was obliged to select the president from the three having the most votes, of whom Mr. Clay was not one, the final result was very doubtful. Clay was speaker of the house of representatives, and much depended on his course. There had been a misunderstanding between him and Mr. Adams; but there were many reasons for believing that he would prefer him to Jackson, although the latter had received a plurality of the votes. No

one could foresee what the future political combinations would be, and it was obvious that this would depend very much upon the course taken by the influential members of Congress. It was said, and I have reason to believe with truth, that at one time the members from Virginia had determined to give the vote of that State for Mr. Adams. Had this been done, it would have been such a decided recognition of his claims as a Democrat, that in all probability his administration would have been received and supported by that party, and the friends of Jackson would have found it necessary to rally under a different name. This was the opinion of Mr. Adams himself, strongly expressed in a letter to Walsh, the editor of a newspaper in Philadelphia, which he published. The result, however, was, that when it was ascertained that Mr. Clay and his special friends would vote for Adams, and that in all probability he would be the leading man in the new administration, the vote of Virginia was withheld from Mr. Adams and cast for Crawford.

Pretty soon after the inauguration of Mr. Adams, a very decided hostility to him was manifested in Congress and throughout the country. To most of the rank and file of the old Democrats, his very name was odious. Mr. Southard found his position by no means an easy one. Mr. Dickerson, the leading senator from New Jersey, was not his friend, and his successor Mr. McIlvaine, was not able to render him a very efficient support. His letters have frequent references to this state of things. Of the date 16th April, 1826, he writes: "I entered this administration with a perfect understanding that it was to be a continuation of Mr. Monroe's; founded on

the same principles, governed by the same policy. I have yet seen nothing to make me doubt that it is so, and as such it merits and shall receive my support. When it ceases to be so, I cease to form a part of it. In taking the course I do, and in devoting my best exertions to what I suppose to be the best interests of the country, I have hoped for the support of New Jersey. Should this hope fail me, my course is not and cannot be doubtful. I cannot burden an administration with the opposition of my friends. I see no reason to apprehend this result; but I am prepared for it. The representation of New Jersey, considering that they voted for General Jackson, seem disposed to act a friendly and fair part to the present administration. From this remark there is one exception in the senate." The New Jersey delegation in Congress voted for Jackson on the avowed ground that he had received the electoral vote of the State.

In July, after this letter was written, I casually met Mr. Southard at Trenton, and he entered into an earnest conversation with me in regard to the election of a senator, it being rumored that Mr. McIlvaine would resign, or at all events decline a re-election. Much anxiety was expressed that some person should be selected upon whom he could depend as a personal friend and a decided supporter of the administration; and his preference seemed to be for Dr. Holcombe, then a member of Congress, who was a warm personal friend from their college days, and who it was known was ambitious of a seat in the senate.

I happened to know, from confidential correspondence with Holcombe, what I found he did not know, that Holcombe was very much opposed to Mr.

Adams, and had made up his mind to go for Jackson. I therefore advised him to see the doctor, and for that purpose he rode out to his residence at Allentown. The result of the interview was that he found it necessary to relinquish that purpose. Shortly afterwards McIlvaine died, and at the ensuing joint meeting, in the fall of 1826, Ephraim Bateman, friendly enough to Mr. Adams, and not hostile to Southard, but not to be reckoned as a personal friend, was elected by his own vote, in opposition to Frelinghuysen, upon whom he might have depended as a friend of himself and of the administration. Holcombe, who was a gentleman of fine culture and good talents, but who had no great fitness for political life, died at an early age in 1828. *

As the final contest between Adams and Jackson drew near, it became more and more apparent that Mr. Adams must fail. But his supporters, and Mr. Southard among them, were slow to learn this. In the fall of 1827 I was at Albany, as one of the commissioners for settling the line between New Jersey and New York. Mr. Clinton was then governor, and the legislature of New York was holding an extra session. Happening to be engaged writing in my room at the hotel, a door into an adjoining room was so open that I necessarily overheard a conversation between two democratic members of the legislature, in which one announced to the other that it was settled that the Bucktail party, as the Democrats of that State were then called, would declare for Jackson. I had also heard it stated that Mrs. Clinton, who was used as the straw which showed how the wind blew, had openly declared her preference for Jackson; and in corroboration of this, Mr. Cambrelling, then a lead-

ing democratic politician, stated unreservedly at the dinner table, that New York would vote for Jackson, assigning as the reason that Clinton was in his favor, and the Bucktails would be, so that Mr. Adams would be left without the support of either of the organized parties of that State; all of which proved true. Clinton died before Jackson's election, but most of his friends supported him, and had he lived he would no doubt have been the secretary of state.

When I returned home, I informed Mr. Southard of what I had heard, and stated my own impression that Mr. Adams would be defeated. He answered, of the date of October 7, 1827: "I have still stronger hopes and higher confidence than you entertain about the result of the coming presidential contest, and if I can find the time will, in a few days, give you my reasons. I have in my visit to Albany had some opportunity of looking into the state of feeling and opinion in New York. I have come to a different conclusion from that mentioned by you." The result was that the electoral vote of New York was divided, a majority voting for Jackson.

New Jersey gave a decided majority for Mr. Adams. A very considerable number of the old Democrats, among whom I was myself numbered, with most of my old political friends who had been in public life, supported him; while many of the old federal leaders went for Jackson. The change in the political relations of the leading men of the State at this time was very remarkable. Many of the old Federalists became life-long Democrats, among whom were Wall, Vroom, Ryerson, Haines; while some of them, like Parker and Chetwood, after Jackson's time went back to their old party relations. Many old Democrats, like

the Penningtons, became life-long opponents of the democratic party; while others, although opposed to Jackson, afterwards acted with the Democrats. As a general rule, the mass of voters adhered to the party names, as they still do.

I agreed with Mr. Southard in thinking that General Jackson had many high qualities, but besides the objection that his popularity was merely that of a successful soldier, his peculiar temper rendered him a dangerous man to be at the head of the government. His integrity was unquestionable, and he had an indomitable will; but his violent passions made him liable to very improper influences. The manner in which he removed the deposits of the government money from the Bank of the United States, corrupt as that institution proved to be, and unnecessary, indeed injurious, as such an institution really was to the business of the country, was decisive evidence of his unfitness for the station he occupied. As to his removals from office, merely upon political grounds, improper as the practice was and is, and first reduced to a system during his presidency, I regard it rather as the result of those influences which raised him to the office than as being his individual act. The truth is, he was the first chief magistrate, after Washington, really elected by the people. At his election the democratic element of our government first manifested its full power; his majority in New Jersey, and probably elsewhere, was greatly increased by the votes of obscure persons who had never voted before. The framers of the constitution intended that the electors chosen for the purpose should exercise their own judgments, and choose the fittest man. This was found impracticable from the first. But still, until

1828, the political leaders, through a congressional caucus, chose the President; the popular mind was never stirred to its depths; a full vote was not obtained, and the mass of those who did vote, did not feel that the choice was theirs. Now all was changed. The consequence was that the busy politicians, whose personal efforts influenced the voters and brought them to the polls, demanded what they naturally deemed their share of the spoils, and demanded it in tones that admitted of no denial. Parties in a popular government, as was wittily said by Charles Townsend, a leading politician in the time of George II.,—"parties, like snakes, are propelled by their tails." Nothing apparently can free us from this bad system but such an experience of its evils as will lead to an efficient civil service bill, requiring competitive examination of candidates.

The legislature of New Jersey, in the fall of 1828, contained a decided majority of the friends of Mr. Adams. Ephraim Bateman was compelled by bad health to resign his seat in the senate. Southard was still at Washington, but had written to me in November, "I have always looked forward to a return to Trenton as the place of my permanent residence, and it is my intention to return there immediately after the fourth of March next. I am, and always have been poor, and must look to my daily exertions for the support of my family." At the joint meeting held in January, 1829, he was put forward as a candidate for the senate; but the late William B. Ewing, then speaker, and several others were also candidates, and Southard was opposed upon the ground that he was not an inhabitant of the State, as the senator elected was required to be by the constitution. How-

ever reasonable this objection might have been as a ground for preferring another person, it was not the interpretation which has prevailed in Congress. After numerous ineffectual votes, a resolution was offered and carried by a majority of the votes, that he was not eligible to the office, and the final result was that Mahlon Dickerson was chosen. At a subsequent joint meeting held in February, Theodore Frelinghuysen was elected senator to fill the vacancy until the ensuing fourth of March, occasioned by the resignation of Dickerson, and for the full term of six years commencing at that date. Shortly afterwards Southard was chosen attorney-general of the State by a majority of one vote, in the place of Mr. Frelinghuysen, who resigned. He returned with his family to Trenton. A letter from Rev. Dr. J. W. Alexander to Dr. Hall, dated Trenton, May 11, 1829, states: "Mr. Southard is very much broken, stoops like a man of seventy, and seems melancholy. If he recovers, he will probably be our next governor."

In another letter dated July 30, he writes: "Mr. Southard has been making a speech at Newark, which was attended by a vast audience, is greatly admired, and will be printed. I should like to introduce you to him. He is one of the most agreeable companions I have ever found, and pays us far more attention than we could ever demand of him. His popularity in this State is rapidly rising to its former acme."

In 1822 he had been chosen one of the trustees of Princeton College. In 1832 the University of Pennsylvania conferred on him the degree of LL.D. His health seems always to have been delicate. He was able, however, to enter upon the duties of attorney-general; and as the office was then without more

than a nominal salary, he was obliged to select the counties affording the best income from the fees belonging to it, and soon had a large practice as a lawyer. I remember that meeting him in the fall of 1832, after it was known that his party had succeeded in electing a majority of the members of the legislature, he remarked to me that he should be called upon by his friends to again take the place of senator; but that he preferred to be left where he was, as he was now for the first time in his life making something more than a support. I had no doubt his best judgment dictated this course; but I did not expect, indeed he did not pretend, that he would have the firmness to resist the temptation again to be prominent in political life. It must be acknowledged that like many other of our men in public office, he was consumed by the fever of ambition.

When the time came, and the joint meeting assembled, he allowed himself to be elected governor; and then with great difficulty prevailed on his friends to elect him senator, thus producing the necessity of resigning as governor, and helping so to distract his party that they lost their majority in the State, and did not regain it for several years. As he was governor only about three months, he held but one term of the court of chancery, and transacted no business of any consequence. He took the opportunity, however, when called upon to deliver to the legislature in January, 1833, documents received from the governor of South Carolina containing the celebrated ordinance of that State professing to nullify certain laws of Congress, to address a long and very able message to the council and Assembly, denying in the most absolute and positive manner the right of any State to

determine for itself the constitutionality of an act of Congress, and concurring in the views promulgated by General Jackson in his proclamation, although expressing "regret at expressions which might be regarded as personal invective."

In 1827 Mr. Southard delivered the anniversary address before the Columbian Institute at Washington, a society formed to promote the claims of science, of which he was a member, that was published and attracted much notice as an eloquent argument in favor of the object of the association. In 1830 he delivered a somewhat, similar address before the Newark Mechanics' Association; and in 1832 he delivered three different addresses, which were published. One of them was an eulogium upon his friend Chief Justice Ewing, and was a fit tribute of respect and affection to the character of a great and good man, whose sudden and unexpected death when at the meridian of his powers and usefulness, so shocked all who knew him. Afterwards he was selected at Washington to prepare and deliver a similar discourse on the professional character and virtues of William Wirt.

These and some other productions of a similar nature showed him to have a peculiar talent for compositions of this description, and that he was entitled to rank with Sergeant, Webster, Everett, and Binney in fullness of knowledge and aptness of expression. An address before the societies at Princeton, delivered in 1837, in which he took for his topic the importance of the study of the Bible, in forming the character of literary and scientific men, of scholars of every grade and every occupation, attracted great and deserved attention. It is a remarkable effort,

full not only of wise and fatherly admonition, but of the most apt and beautiful classical quotations and allusions, illustrated by references to the writings of Aristotle, Socrates, Plato, and other great authors of ancient times, and contrasts of their failures with the perfect moral law of the Scriptures. His concluding words deserve ever to sound in the ears of students and of lawyers : —

“ Of all men, American scholars, and you among them, ought not to be ignorant of anything which this book contains. If Cicero could declare that the Laws of the Twelve Tables were worth all the libraries of the philosophers, if they were the *carmen necessarium* of the Roman youth, how laboriously, *manu nocturnæ diurnaque*, ought you to investigate its contents, and inscribe them upon your hearts. You owe to them the blessed civil institutions under which you live, and the glorious freedom which you enjoy ; and if these are to be perpetuated it can only be by a regard to those principles. Civil and religious liberty is more indebted to Luther and Calvin, and their compeers of the Reformation, and to the Puritans and Protestants of England, and to the Huguenots of France, than to any other men who ever lived in the annals of time. They led the way to that freedom, firmness, and independence of thought and investigation, and the adoption of these principles, as the guide in social government, as well as private actions, which created a personal self-respect and firmness in its defense, which conducted us to a sense of equal rights and privileges, and eventually to the adoption of free written constitutions as the limitations of power. ”

“ Be you imitators of them. Make your scholarship subservient to the support of the same unchanging principles. They are as necessary now as ever they were to the salvation of your country, and all that is dear to your hopes. The world is yet to be proselyted to them. Religion and liberty must go hand in hand, or America cannot be established, the bondage of the European man broken, Africa enlightened, and Asia regenerated. And even here we are not without peril. Look abroad : are not the pillars of our edifice shaken ? Is not law disregarded ? Are not moral and social principles weakened ? Are not the wretched advocates of infidelity busy ? The sun has indeed risen upon our mountain tops ; but it has not yet scattered the damps and the darkness of the valleys. The

passions are roused and misled. Ancient institutions are scorned. Our refuge is in the firm purpose of educated and moral men. Draw then your rules of action from the only safe authority. Hang your banner on their outer wall. Stand by them in trial and in triumph. Dare to maintain them in every position and every vicissitude, and make your appeal to the source from which they are drawn. And then come what may, contempt or fame, you cannot fall; and your progress at every step will be greeted by the benedictions of the wise and good."

After his return to the senate in 1833, Mr. Southard took an active part in the proceedings of that body, speaking and voting generally in the minority, until the close of the administration of Mr. Van Buren in 1841. In the fall of 1838 he was reëlected to another full term. In 1841 he was elected president of the senate, and upon the retirement of Vice-President Tyler, filled that office permanently until his death, and had the entire confidence of all parties, as a dignified, impartial, and able presiding officer. But he was not without his trials. When Harrison was selected as the candidate of the Whig party, and the delegates to the convention from New Jersey cast their votes for General Scott, Mr. Clay, taking for granted that this was done by the advice of Mr. Southard, openly accused him of hostility to him. I heard the late Roswell L. Colt, of Paterson, say he was present when Mr. Clay "abused him shamefully." The fact was, however, that Mr. Southard had no part in the matter. Of all the public men I have known, he seemed to have the least tact and skill as a party leader. This was the more remarkable, because he was always a favorite with his party. He was engaging in his personal intercourse, and was justly considered their ablest man; but he had no skill as an organizer, and indeed no faculty of appreciating the capabilities of others as party leaders.

Returning to his practice at the bar, when he ceased to be secretary of the navy, he soon had a large business. He cannot be said to have been a profoundly learned lawyer, but he was a skillful advocate, generally clear and correct in his conceptions, seizing readily the strong points of his cause, and bringing them forward by a distinct and lucid statement, and presenting his arguments with great earnestness and force. His voice was usually pleasant, and had great compass and power, but he not unfrequently pitched his tones so high as to render it exceedingly harsh and disagreeable. He did not always guard his propositions with due care. I remember that shortly after he was first made senator, I was retained to argue an admiralty case before Judge Washington, and learning that I was to oppose Southard, I expressed to General Wall my apprehensions that he would be too strong for me. Prompt to encourage a beginner, his reply was, "You have no reason to be afraid; he will make a strong assault, but he is apt to forget that in a hard combat a shield is often as necessary as a sword." I do not remember the particulars of the argument; but as my client had a decree in his favor, I was satisfied.

In 1838 he was appointed the president of the Morris Canal and Banking Company, and from that time took up his residence in Jersey City. It is not probable that he possessed any special financial ability, or that the directors of this institution expected him to perform any onerous duties connected with the station. But he had a high character for integrity and ability, and was now universally known and respected throughout the country; characteristics for which it was thought worth while to give

him a good salary, and thus obtain the benefit of his name in aid of an institution that needed the support of a strong pillar.

He died at the house of his wife's brother, in Fredericksburg, June 26, 1842, having been obliged by increasing illness to leave his place as president of the senate several weeks previously.

Upon his death becoming known to Congress, the usual resolutions of respect and condolence were adopted. In the senate, Mr. King of Alabama, afterwards elected Vice-President of the United States, who did not then belong to the same party, said of him with much feeling, and I believe with much sincerity and truth:—

“It has been my fortune for many years to be intimately acquainted with the distinguished man whose death has just been announced. I have known him in private life, and can bear testimony to his kindness of heart, amiableness of disposition, and uniform courtesy. I have known him in public stations, and can with the same truthfulness testify to his courtesy, and the ability with which he discharged the various trusts confided to his care.”

The most felicitous description of him is contained in a letter from Rev. Dr. J. W. Alexander, who was several years pastor of the Presbyterian Church in Trenton, to Dr. Hall, after his death:—

“Samuel L. Southard was also a member of the congregation, and a friend of all that promised its good. More sprightly and versatile than Mr. Ewing, he resembled a tropical tree of rapid growth. Few men ever attained earlier celebrity in New Jersey. This perhaps tended to produce a certain character which showed itself in good natured egotism. Mr. Southard was a man of genius and eloquence, who made great impressions on a first interview, or by a single argument. He loved society, and shone in company. His

entertainments will be long remembered by the associates of his youth.

"It is not my province to speak of his great efforts at the bar; he was always named after Stockton, Johnson, and Ewing, and with Frelinghuysen, Wood, Williamson, and their coevals. Having been bred under the discipline of Dr. Finley, at Baskingridge, he was thoroughly versed in Presbyterian doctrine and ways, loving and preferring this branch of the Church to the day of his death. Defection from its ranks gave him sincere grief, as I am ready more largely to attest if need be. In those days of his prime, Mr. Southard was greatly under the salutary influence of the chief justice, who was his mentor. I think he felt the loss of this great man in some important points. So earnestly and even tenderly did he yield himself to divine impressions, that his friends confidently expected that he would become a communicant. During this period he was an ardent advocate of the temperance society, then in its early stage. I remember attending a meeting at Lawrenceville, in company with my learned friend, the present chief justice, where Mr. Southard, following Mr. Frelinghuysen, made an impassioned address in favor of abstinence and the pledge. In regard to religious things, the change to Washington did not tend to increase solemnity or zeal. I have been informed that Mr. Southard felt the deep impression of divine truth at the close of his days. As a young minister, I received from him the affectionate forbearance of an elder brother, and I shall always cherish his memory with love."

ELIAS P. SEELEY was chosen by the joint meeting governor in March, 1833, upon the election of Governor Southard to be senator, and held the office until the fall of that year, when the Jackson party obtained a majority of the legislature, and Mr. Vroom became governor. Mr. Seeley was the descendant of one of the Puritan settlers of Fairfield, Cumberland County, who came there from Connecticut about the year 1698. His father removed when he was a child, to Bridgeton, held many county offices, and was several times a member of the Assembly and council of the State.

Governor Seeley was a fellow-student with me in the office of Daniel Elmer, Esq., and was licensed as an attorney at the same time that I was, in May, 1815. He had but a limited education, and never attained to much celebrity as an advocate, but had a good local practice as an attorney and conveyancer, and was very highly esteemed by his fellow-citizens. He became a member of the legislative council in 1829, was reëlected for three or four successive years, and in 1832 was chosen the vice-president of that body.

While he held the office of governor and chancellor, he delivered several opinions in equity cases argued before him; but none of them have been printed. The most important case argued before him was the celebrated Quaker case, which commenced on the appeal from the decree of the chancellor, in the court of appeals, of which he was as governor the presiding officer, in July, 1833, and continued more than a month, nine days being consumed in the reading of the evidence. The counsel were Garet D. Wall and Samuel L. Southard for the appellants (the party designated as the Hickites), and George Wood and Theodore Frelinghuysen for the Orthodox. The result was that the original decree was affirmed, seven of the judges, including Governor Seeley, being for affirmance, and four for reversal. Upon announcing the decision, however, by order of the court, he read a carefully prepared recommendation that the litigant parties should make an amicable compromise, in regard to the property in dispute and the other property held by the society; and this recommendation was subsequently carried out by a special law, which still remains on the statute book,

whereby it was enacted that the rights, estates, property, and privileges of the members of the unincorporated Society of Friends in this State should not be hurt, or in any way affected, by the division and separation which had occurred ; and doubtful as the constitutional efficacy of this act may be, there has been no attempt to impugn its provisions.

Mr. Seeley was in subsequent years several times a member of the legislature. He died in 1846, at the comparatively early age of fifty-five.

CHAPTER VIII.

GOVERNORS I HAVE KNOWN.

WILLIAM PENNINGTON. PHILEMON DICKERSON. DANIEL HAINES.

WILLIAM PENNINGTON, governor and chancellor from 1837 to 1843, was the son of Governor William S. Pennington, and was born Newark in 1790. After the usual preparatory education in the schools of his native city, he entered Princeton College, and graduated at that institution in the year 1813. He studied law as the pupil of Theodore Frelinghuysen, and in his after life was accustomed to acknowledge with deep feeling the benefit of his instructions and example. He was licensed as an attorney in 1817, as a counselor in 1820, and in 1834 was called to be a sergeant at law.

Continuing to reside in Newark, he soon married an estimable lady, a descendant of Dr. William Burnet, surgeon-general of the army, with whom he lived more than forty years a happy husband and father, and who still survives. I became acquainted with him in 1824, when I entered upon the duties of United States attorney for New Jersey, and found him clerk of the circuit and district courts. We were thus thrown for several years into very intimate intercourse, and became attached friends as long as he lived. Never did I meet a more genial companion, or

a more desirable associate. Adopting the admirable estimate of his character contained in the funeral discourse of his pastor, Rev. Dr. Poor, I can say, "He was an honorable man, standing in the foremost rank of those who merit that appellation. Honorable was the title he wore in virtue of the official stations which he from time to time occupied; but men when they called him by that title never sneered as they sometimes do in other cases, thinking what a satire it is upon the littleness of those who so often happen to acquire it. They gave it him cordially. They felt it belonged to him by more than human right; the fitting prefix to a stately name, and the appropriate designation of a noble character, thinking more of his manly worth than of his official station. And how much there was in him that went to warrant the title. The fundamental qualities of his nature, those elements, I mean, which formed the real stuff of the man, and rendered him peculiarly what he was, and earned for him his distinction, were, as I conceive, sound practical common sense, cautious judgment, thorough sincerity, integrity of purpose, quick intuitive perceptions of and a strong regard for the right, all strengthened and regulated by a profound conviction of the truth and reality of religion, a conviction which obtained in him with singular force, long before he professed a vital faith in Christianity, which rendered him from the first a habitual attendant on divine worship, and a considerate respecter of sacred things. These powers and virtues formed the underlying granite of the man. They were not acquired, but innate qualities; habits, in the old sense of the term, which showed themselves spontaneously and gave him his peculiar type, and laid the foundation for future attainments and distinction."

It was almost a matter of course that such a man should soon have a respectable practice as a lawyer. Residing as we did in different parts of the State, and never attending the same circuits, I did not come into contact with him in the trial of causes; but I knew that his course was all the time upwards. He had mastered the great principles of the law, but was not a diligent student, nor at all disposed to pay attention to the minutiae of the profession. I remember saying to him familiarly, after he had been some time chancellor, that he might adorn his opinions with a little more display of learning. His reply was: "I am more concerned to decide rightly than to display learning. When I had finished my studies with Mr. Frelinghuysen, he said to me one day, 'William, now you must apply yourself diligently to your books;' but I replied, 'Mr. Frelinghuysen, I think I shall try with how little learning I can get along;'" and then turning to me, he added, "Don't you think I have succeeded pretty well?" He did succeed remarkably well, having industry, enough, to study the facts and law, and sagacity to lay hold of and fully understand the substantial merits of the cases brought before him.

The Pennington family, I believe without exception, as well as many others of the leading Democrats, were supporters of John Quincy Adams as against Jackson. When in the progress of events the friends of Jackson became identified with the mass of the Democrats, and however before named were ranked as members of the great democratic party, the result was that most of the before Democrats who supported Adams ceased to belong to that party, and with such of the old Federalists as adhered to him, composing in

fact the majority of them, formed a new party, which first assumed the name of National Republicans, and in 1834 of Whigs. William Pennington belonged to this party, and for several years was the acknowledged leader of the Whigs in this State, a position for which he was peculiarly fitted.

It was not until the jealousy of some of that party, who aspired to be leaders, had to some extent displaced him from that position, that they ceased to rule the State. He supported the Republicans, in spite of his objection to Fremont,—his distrust of whom subsequent developments showed to be well founded, because of his attachment to Mr. Dayton, the candidate for vice-president, and of his alienation for so many years from the Democrats.

In the year 1828 he represented the County of Essex in the Assembly. In the fall of 1837, after Jackson had ceased to be president, and was succeeded by Mr. Van Buren, the Whigs having obtained a majority of the members of the legislature, selected Pennington as governor. He was reelected every year until 1843, when the Democrats again prevailed, and he was superseded by Daniel Haines, the last governor elected by the joint meeting, who held the office until the adoption of the new constitution in 1845, which required the governor to be chosen by a popular vote, and separated the office of chancellor from that of governor. The agitation of the question of modifying the defective Constitution of 1776, favored by most of the Democrats, and opposed, or at least disliked, by most of the Whigs, had much to do with the change. For the last forty years New Jersey has been a doubtful State as to politics, a seemingly unimportant matter often producing a change; and this

is probably a great advantage, since, as politics are managed in the United States, nothing acts as so reliable a check upon the despotic measures a great majority are always prone to adopt, as the fear of losing their power. Indeed I think the early as well as the later history of our country has shown, that notwithstanding the great pains taken by the framers of our excellent constitution, so to arrange the balance of powers in the general government as to prevent a triumphant popular majority from oppressing the minority, they succeeded very imperfectly.

During the six years he sat as chancellor and judge of the prerogative court, his decisions gave general satisfaction. He took a common sense view of the cases brought before him, and discerned the true equity between the parties with intuitive sagacity. But one of his decrees was overruled in the court of appeals, and that was heard after he ceased to preside, and turned on very doubtful questions,—the weight of legal opinion being in favor of his decision. Probably no man that ever acted as the presiding officer of the old court of errors exercised such a controlling influence over its decisions as he did. The purity of his motives was never questioned. His opinions are reported in the first and third volumes of Green's Chancery Reports, and are models of condensed and lucid exposition. When research was absolutely necessary he did not shrink from the duty, but ordinarily he contented himself with that obvious view of the case which served to show on which side exact justice required the decision. In the case of the will of Abraham Coursens, 3 Green C. R. 410, he made an elaborate examination of the jurisdiction and power of the governor, as ordinary and surrogate general,

and of the orphans' courts and surrogates', and settled their respective boundaries in a manner entirely satisfactory. During the time he was chancellor, preferring to confine myself mainly to a home practice I had ceased to be a regular attendant of the courts at Trenton, and therefore argued but few cases before him ; but I continued to be intimate with him, and know that he gave great satisfaction as a judge to the bar and to suitors.

In the execution of his duties as governor, a circumstance occurred which exposed him to much unjust obloquy and reproach from some of his political opponents. The congressional election of 1838 was warmly contested throughout the Union, and in New Jersey the contest was very severe and close. Six members were to be elected by a general ticket, and in two of the counties the clerks had rejected some of the townships' returns, for real or alleged deficiencies in the form of the certificates of election, or in the time of delivering them. The omission of the votes in these townships gave to five of the Whig candidates majorities which they would not obtain if all the votes were counted ; one of the Whig candidates (Joseph F. Randolph, afterwards justice of the supreme court) having run a little ahead of his ticket, was elected beyond dispute. As the election law of the State then was, it became the duty of the governor, with the aid of his privy council, to cast up the number of votes for each candidate, and determine the six persons who had the greatest number of votes, which persons he was directed forthwith to commission, under the great seal of the State, to represent the State in the house of representatives. In the fulfillment of this duty, the governor commis-

sioned all the six Whig candidates, who, according to the certificates before him, had the greatest number of votes. There was at that time no provision in the law authorizing him or the clerks to take any measures for correcting the returns, so that it became his duty to act upon those delivered to him. This proceeding was substantially in accordance with a subsequent decision of the supreme court in the case of the State *vs.* The Governor, 1 Dutcher R. 332.

When the Congress convened, parties were so nearly divided that it became manifest that the majority would be determined, and the election of a speaker and the consequent organization of the committees, would depend upon the votes of the five members from New Jersey. No law existed regulating the mode of organizing the house. Under these circumstances, the clerk of the previous Congress, who by the rules of the house continued in office until his successor was chosen, made up a roll of the members, and called them in order. Upon this occasion he was a Democrat, and when he had called the name of Mr. Randolph, he paused, and proposed, if it were the pleasure of the house, to pass over the names of the five whose right to seats was to be contested, the circumstances attending whose election and obtaining commissions were well known, and indeed manifested by authentic official documents in the hands of the clerk, until the members of the remaining States should have been called. A stormy and disorderly debate ensued, which continued several days, and ended by the choice of John Quincy Adams as temporary chairman, a situation he accepted. Upon a motion to call only the names of the undisputed members, he decided, that those holding

the commissions could vote ; but this being appealed from his decision was reversed by a vote of one hundred and fourteen to one hundred and eight, and it was finally carried that only the names of the members whose seats were uncontested should be called, and that the members thus called should be a quorum to settle the claims of members. The result was, that on the twelfth day of the session, Robert M. T. Hunter, of Virginia, a compromise candidate, was chosen speaker, having received one hundred and nineteen votes, against fifty-five for J. W. Jones, the democratic candidate. On the 28th of February the five democratic members, namely, Philemon Dickerson, Peter D. Vroom, Daniel B. Ryall, William R. Cooper, and Joseph Kille, were admitted to take their seats by a vote of one hundred and eleven to eighty-one ; and afterwards, in July, a large amount of testimony having been taken, filling a volume of nearly seven hundred pages, the committee reported that the sitting members were duly elected, which was agreed to by a vote of one hundred and two to twenty-two.

Thus ended this contest, so far as Congress was concerned ; but much continued to be urged in this State, on both sides of the " broad seal war," as it was called, for several years. As the case stood, both parties were about equally wrong : the Whigs by insisting, as they did with great earnestness, that the refusal of their seats to those who held commissions under the "broad seal" of the State was a great indignity to the people of that State ; and the Democrats by their clamor against the governor for granting those commissions. The governor had no option but to issue the commissions, as he did ; but for the

house of representatives to allow its organization to be radically changed by admitting members who had not received a majority of the votes, as fully appeared by undisputed documentary evidence, would have been a blunder which no party could be expected to make. One good result was the passing of a new election law for this State, which remedies most of the defects in the old law, and renders another broad seal war much less likely to occur.

At the time he received the appointment of governor, and was thus obliged to abandon his profession for a time, Mr. Pennington had an excellent practice as a lawyer. I heard him say that he had at least a hundred suits in different stages of progress. When he ceased to be governor, he resumed his business, and was soon fully employed, although in some respects in a different class of cases. He was now much relied upon for the argument of causes at the bar of the supreme court and in the court of errors. He was always listened to with much interest, seldom failing to seize the strong points of his case and to urge them with great force. He was one of the counsel in the Meeker will case, a celebrated cause which for years engaged the attention of the prerogative and supreme courts of the State and the circuit court of the United States, the will being sustained by the supreme court, and rejected as spurious by the jury. The most important cause in which he was engaged after I had a seat on the bench was that of *Gifford vs. Thorn*, 1 Stock. C. R. 702.

This was indeed one of the most remarkable causes ever brought before the courts of this State, not only for the large amount of money involved, but for the difficult questions of law and fact upon which it

turned. It grew out of the will of William Jauncy, an Englishman, made in New York in the year 1828, which came before the court of chancery of New Jersey, in consequence of the residence in this State of one of Jauncy's executors, and the complainant. The residue of a large estate amounting to millions, was bequeathed to the oldest son of an illegitimate daughter of the testator's brother, "when he arrives to the age of twenty-one years, to him and his heirs forever."

This son was sent to one of the universities of England, and there broke his neck in a steeple chase before he reached the age of twenty-one. This raised the question whether the legacy was vested so as to descend to the youth's father, or was lapsed so as to go to the representatives of the testator, of whom there were several, related to him only remotely. The person of whose estate Gifford, the complainant, was the administrator, in her life-time, and twelve years before her death, executed a release for her share of the estate in consideration of six thousand dollars, paid according to her directions. The bill was filed to set aside this release, upon the allegation that she was incompetent to understand what she was doing, and was imposed upon, and by threats and other improper influences induced to take a small sum of money, instead of the two or three hundred thousand dollars to which she was entitled. Chief Justice Green, who sat for the chancellor, held that the legacy lapsed by the death of the legatee, so as to go, not to his representatives, but to those of the testator; but upon the facts of the case, refused to set aside the release, and dismissed the bill.

When the case came on for argument before the

court of appeals, Whitehead and Wood were heard for the appellant, and Pennington and Charles O'Conner of New York for the appellees. Seldom if ever has a case been argued with more ability. Each of the counsel were allowed a full day, and all of them made uncommon efforts to succeed. Mr. O'Conner confined himself almost entirely to the legal questions, as to which the decision was against him. Pennington dwelt mainly on the facts, and succeeded in placing them before the court in a light favorable to his clients, and in convincing the judges that the decree of the chancellor should be affirmed. His argument was of great power and excellence. It is proper to remark, however, that the main fact which turned the scale in his favor, was the deliberate acquiescence of the deceased lady in what she had done, for so long a time after she had known all the important facts of the case, and had every opportunity of consulting those best qualified to advise her.

The great popularity and wonderful good sense of Governor Pennington made him, as has been before remarked, the best leader of the Whig party they ever had in the State. But it happened in his case, as in some others, that there were in his district some gentlemen of his party who thought they had been kept in the background long enough, and aspired to be leaders themselves, and no longer to remain among the led. The consequence was, that at the election for a member of Congress in 1843, these persons nominated a Whig in opposition to the regular candidate of that party, who, it was alleged, although I believe untruly, had been nominated through the Pennington interest; and the Democrats falling in with this movement, succeeded in defeat-

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ing the regular candidate. On this occasion, the Pennington name was severely attacked, although he who stood at its head was not personally assailed, so that it may be said with truth, that although at one time the Pennington name was made unpopular, he himself never was. In the end, as might be expected, most of the bolters, and among them their candidate, became entirely alienated from the Whig party.

When, in consequence of the change made by the new constitution, it became necessary for the governor to nominate a chancellor in 1845, it was supposed by many of Pennington's friends, and I have reason to know desired by himself, that he should be restored to that position. But other counsels prevailed, and he never again held any important state office. In 1850, while Fillmore was president, he had some expectation of being appointed minister at one of the European courts, but the appointment of William B. Kinney to Turin prevented his success. He was offered the place of governor of the Territory of Minnesota, but this he declined.

In the year 1858, however, when the political troubles in his congressional district had mainly come to an end, in spite of the fact that he had peremptorily declined a nomination, he was found to be the only man that could command general acquiescence, and he was elected a member of the thirty-sixth Congress. He had little expectation of taking a prominent part in that body. In this he was greatly disappointed, for when the body convened in December, 1859, it appeared that parties were so distracted, and the contest between the South and the North had assumed such a threatening aspect, that for a time

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there seemed to be very little prospect of a peaceable organization of the house. But after a memorable contest of nearly two months, William Pennington was selected as speaker. This was certainly strong testimony of his character, coming as it did from a body of men, very few of whom knew him personally, or had any experience of his qualifications to fill a position so difficult and so important.

It was universally conceded that for fairness and impartiality, and for wise conciliation, he had no superior. That he was well skilled in the administration of a set of rules very complex in themselves, and difficult to understand, could not be affirmed.

He had never been a member of Congress before, and the wonder was that he succeeded so well as he did. In a conversation I had with him in reference to some of his difficulties, he mentioned as characteristic of the dispositions of some of the prominent men, that having decided a perplexing question of order, thought by his political friends to be of considerable importance, in opposition to the views urged by most of the Whigs, he placed a friend in the chair, and retired to his private room while the question remained in such a situation that he could alter his decision if convinced he was wrong. Sending for Mr. Grow, who had been speaker before, and consulting him, he said at once, "You are clearly wrong, sir." Mr. Sherman, on being consulted, quite as decidedly said he was right, and should adhere to his decision. Mr. Colfax, upon being consulted, said he thought it a doubtful question, upon which much might be said on both sides.

Governor Pennington was distinguished for good humored pleasantry, often rising to wit, and this

characteristic manifested itself very prominently in his public speaking, especially in his political addresses. It is impossible to repeat his many good sayings, so as to give even a faint idea of their aptness and humor, without the aid of his voice and manner. Two or three of his conversational remarks it may be pleasant to recall. When asked what was doing at the court-house, he answered: "C. (one of the lawyers) tried for half an hour, without success, to split a hair; and when I left, H. was firing away at a barn door, but never once hit it." Speaking of our two senators, he shrewdly characterized them by saying: "If they are engaged only in cutting down small trees, Miller will fell them fastest; but when they come to a big tree he will have to give place to Dayton." Being asked his opinion of the characters of two prominent gentlemen who were opposed to him in politics, after speaking very favorably of both, he remarked, "But if I was on my back, awaiting execution for a political offense, with the guillotine ready to fall, and I should see one of them [whom he named] coming towards me, I should shut my eyes in utter despair, my doom would be certain; but if I saw the other near me, I should have hope, and feel pretty sure that he would find some way to relieve me."

Adopting, as expressing my own sentiments, a communication from our mutual friend Cortlandt Parker, I can say of him that

"Physically, he was a most imposing man. About six feet two inches high, well proportioned, with regular features, an eye serious, kind, and beaming with good nature. It was truly said of him in one of the notices of his death, that 'manliness, genial good humor, and dignity, shone throughout his demeanor.' But to pursue the

language of the same notice, written by one who, if he loved him dearly, yet knew him well, ‘the real worth of the man lay in qualities beneath this pleasing surface. They were, morally, his thorough reliability, and intellectually, a wonderful common sense; what Locke calls large, roundabout common sense, improved till it seemed instinct rather than intellect. We speak of it as a wonderful common sense. And so it was. We have seen no other man possessing it in equal degree. Nor could any amount of learning, industry, or ability, invest a public man with a firmer and more influential grasp upon the hearts and minds of his fellow-men, than through this faculty he attained. It was everywhere the secret of his success. In the forum, there was no jury which could resist the effect of views so like pure and unsophisticated wisdom, expressed with such transparent honesty of manner. Popular assemblies delighted in his every word, and seemed to abjure criticism of style and diction, in their conviction that everything he said was just right. The bench was always enlightened by his clear, though peculiar elucidation of the law of his cases; and the common mind in daily life, believed in him implicitly.’

“ Such a man was eminently calculated for chancellor; and he was extremely successful in that high office. But one of his decisions was ever reversed, and that the bar in general indorsed as correct. He had almost a contempt for form. He disliked labor, and was not distinguished for research. But his instinctive common sense carried him right; and his opinions, couched in a peculiar, almost epigrammatic style, full of pith, convince the reader that what he decided ought to be law, if it is not.

“ He was a man of great tact, an excellent man of business, and safely trusted as an adviser, or to hold and manage property. He was full of anecdote, both in public efforts and conversation, and gained many a cause by a felicitous story. His career is not exactly valuable as an example, for certainly no one could learn to be like him. If ever character was born, his was.”

In the language of his pastor, it is further to be said of him,—

“ Few shrunk more sensitively from the infliction of pain, and few were capable of being more powerfully aroused by the sight or sense of wrong. And if at any time the stronger impulses of feeling, which few suspected to be lying beneath that courteous, self-possessed demeanor, broke out, as they sometimes did, into the utterance of

unkind words towards any, no man was more quick to repair the injury ; and the very gentleness of the manner in which the apology would be rendered was sure to make it the occasion of drawing to him a deeper respect and a warmer friendship. In fact he was a person of remarkable sentiment ; and none could be an inmate of his family without being struck with the graceful ways in which this sentiment of his, as a husband, a father, a brother, and friend was continually showing itself. It made his home a home for the heart ; there he aimed to rule by love, and love alone. Severity was painful to him, and great must be the fault that would bring him to manifest it."

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Governor Pennington died in February, 1862, his death being hastened, if not produced, by a large dose of morphine, administered through the mistake of an apothecary. He died the death of a Christian, prepared by faith in Christ for the great change. During all his life he was an habitual attendant on divine worship, and often, as I had occasion to know, seemed on the point of giving his heart to God, and of making a formal profession of religion. But it was not until a few years before his death that he did this. The statement of his pastor, in his funeral discourse, gives us the most reliable account of his religious course, in respect to which he could speak from personal knowledge :—

“ When the question was raised, as to the formation of the High Street congregation, in 1849, he was induced to withdraw from the First Presbyterian congregation, where he had long occupied position as president of the board of trustees, and to give his support to the infant organization. The sacrifice thus made woke in him new interest in religious affairs, and he became more than ever a constant attendant on divine worship. But it was not until March 7, 1858, during the revival of that memorable winter, that he formally professed his faith in the Redeemer. The change then thus avowed was, however, far from being an abrupt one. His nature was not wont to turn sharp corners. He disliked sudden transitions ; and the process of his conversion accorded with these habits of his mind.

In him the ‘going forth’ of God’s grace ‘was as the morning ;’ first twilight, then the dawn, and when the sun rose above the horizon, it shone out bright and clear. So decided was his position as a Christian disciple, that at the election of elders, which took place within a year after, contrary to the usual custom, and against apostolic advice, and I may add against his own judgment also, the Church elected him to its session, and he was induced to abide by its decision. I think all will agree in testifying that his service in that sacred office has been faithfully and acceptably performed. Few of our number have shown so warm an interest in the welfare and edification of the Church as himself. He loved the brethren. His place at the prayer-meeting was never vacant, except under the compulsion of circumstances. None listened to the Word with more appreciative attention, or was more ready to accept it when honestly presented, in whatsoever style. He prized simple truth far more than the eloquence of words, and knew well how to distinguish substance from glitter. It was with many an apprehension we parted from him as he went forth to encounter the seductions of the Capitol in the immaturity of his Christian experience. But when he returned to us, it was with a spirit not indeed altogether unaffected by the trying scenes through which he had passed, yet true to his profession. . . . Again he was faithful at the post of his duty ; and for the last few months, those who knew him intimately and held converse with him on religious things, observed the ripening of his piety. He showed evidence of special preparation for the change of whose near approach he seemed to have mysterious premonitions. If his faith was not so deep as that of some, if his range of Christian experience was not as broad as that of some, yet this we say of him — his piety was simple, sincere, child-like, fearless, and frank. He loved his Saviour, and often expressed his sense of the largeness of that grace which had made a place for him in the heavenly kingdom at so late a period in life. He loved the Scriptures, and read them like one searching for hid treasures. He loved the society of Christian people, of good men, and he felt his house blessed when they came to visit him. He was a man of habitual prayer, and found therein both solace and strength. And for those things we call him a true Christian, a child of God, one who has been washed, pardoned, sanctified, and, we trust, is now glorified by that grace which has been given unto us in the Gospel.”

PHILEMON DICKERSON, a brother of Mahlon, was licensed as an attorney in 1813 and as a counselor in 1817 ; in 1834 was made a sergeant at law. It may be mentioned that this last degree was originally of some importance, as only sergeants could pass a common recovery in the supreme court, which followed in that respect the practice of the English court of common pleas. As for a time the examiners of students were appointed exclusively from the sergeants, the distinction was continued until 1839, since which date no sergeants have been designated.

In the winter of 1812 Mr. Dickerson was residing in Philadelphia, and I became acquainted with him there. In a short time he took up his residence at Paterson, in New Jersey, married and practiced law there. In 1833 he was elected member of Assembly ; and in 1836 was chosen governor by the Jackson party, holding the office, however, but one year, that party, which had now assumed the name of Democrats, being defeated in 1837. In 1839 he was placed by the Democrats on their ticket for Congress, and, as was finally settled, received a majority of the votes ; but owing to irregularities in some of the township returns, they were thrown out by two of the county clerks, so that the votes returned to the governor did not show him elected, and the certificates were given to others. In 1841 he was appointed, by Mr. Van Buren, judge of the district court, and held that office until his death, at the age of about seventy, in 1862. He was afflicted by a cancer in his face.

The few opinions he had occasion to deliver during the year he was chancellor, are reported in Green's *Chan. Rep.*, and show him to have possessed

a discriminating mind, and a good knowledge of law and equity. The case of *The Associate Reformed Church vs. The Trustees of the Theological Seminary at Princeton*, 3 Green, 77, involved the right of the latter body to the possession of a valuable theological library, and delicate questions respecting the rights and duties of the synods of the respective churches, in the formation of a union. His decision against the defendants was acquiesced in, without appeal. In the case of *Hulme vs. Shreve*, 3 Green, 116, he had occasion to consider the rights of parties owning mill sites, and the effect of flowing back the water, and at the request of the parties made a personal examination of the premises; his opinion shows how fully he mastered all the difficulties of the subject. The decree made in conformity to his views, was affirmed in the higher court by a very decisive vote.

He had a good practice as a lawyer, and was a satisfactory judge as chancellor and in the United States court. He was distinguished for dry humor, one instance of which occurred just after the war of the rebellion commenced. A zealous Republican, who was summoned as foreman of the grand jury, proposed that all the jurymen present should take the oath to support the Constitution of the United States. Upon which the judge remarked, in the most quiet, business-like manner, that if any persons in the court were so distrustful of themselves as to think the oath necessary, he was quite ready to administer it. No one responded, and the business of the court proceeded as usual.

DANIEL HAINES was governor and chancellor under the old constitution two years, and was elected for one term of three years by the people. He was born in the city of New York, in the year 1801. His father, Elias Haines, was a well known and for many years a successful merchant of that city, and was noted for his benevolence and probity. He belonged to a family of that name, who were of the earliest settlers of Elizabethtown. Stephen Haines, the grandfather, and his sons were distinguished during the War of the Revolution for patriotic zeal and active service. They were one night surrounded in their dwelling by a strong force, which captured them, and took them as prisoners to New York, where they were imprisoned in the "old sugar-house," and were for a long time, with others, great sufferers. The mother of Governor Haines was a daughter of Robert Ogden, of Sparta, in the County of Sussex, and the sister of Governor Ogden.

Daniel Haines received his preparatory education from the Rev. Dr. Edmund D. Barry, celebrated as a teacher in New York, and at the academy in Elizabethtown. He was graduated at the college of New Jersey in 1820, and was a classmate of Chief Justice Green, Judge Field, and Rev. Dr. James W. Alexander. He studied law with Thomas C. Ryerson, afterwards judge, at Newton; was licensed as an attorney in 1823, and as a counselor in 1826, and was called to be a sergeant at law in 1837.

He settled as a lawyer in 1824 at Hamburg, in Sussex County, and has continued ever since to reside there. He has been twice married. His practice as a lawyer, although never very large, soon became quite respectable. The year of his commencement brought

forward General Jackson, whose cause was espoused by most of the leading politicians of the county, both Democrats and Federalists, so that for many years Sussex gave the largest majority for him, and for those that succeeded him as Democrats, of any county in the State. Young Haines was of federal descent, and took an active part in promoting the success of Jackson, the township of Vernon, in which he resided, casting all the votes that were polled in his favor.

In 1839, a question regarded as of importance to the county having arisen, he was induced to accept a nomination to the council of the State, and was elected to that position. This brought him into the political contest called the "broad seal war," in which he took an active part on the side of his political friends. The legislature elected in 1838 had passed a series of resolutions, which they ordered to be addressed and forwarded, not to the speaker of the house of representatives, but to "The Honorable Robert M. Hunter, representative of Virginia." This address had been refused to be received by Mr. Hunter, who justly regarded it as insulting to the body over which he presided, implying that it was not entitled to judge for itself in regard to its due organization. This rejection of course excited the Whigs to renewed action in the session of 1839-40, and new resolutions were introduced into the legislature, denouncing in strong terms the action of the house of representatives, as equivalent to declaring New Jersey out of the Union, and no longer entitled to a voice in the councils of the nation. Amzi Armstrong, of Newark, and Jacob W. Miller, then members of the council, were the leading advocates of these resolutions, and Haines bore the brunt of the contest in opposition. The Whigs

being at that time largely in the majority, carried their resolutions; but the efforts of Haines and his friends were not lost. The testimony taken in reference to the election which occasioned the difficulty established the fact that the democratic members had received a clear majority of the votes, and their party grew stronger and stronger in the State, until in 1843 it carried a majority of the legislature. The debate in which Haines took so prominent a part, served to make known his ability, and to bring him forward as a leader. He served a second time in the council, and then declined a renomination.

When in the fall of 1843 the Democrats obtained a majority of the legislature, his friends brought him forward as a candidate for the situation of governor, and he received a majority of the votes in the joint meeting, only three weeks after the members were elected, and, as I have understood, one week after any suggestion that such a measure was intended had been made to him.

The leading measures he promoted as governor were the advancement of the cause of education, and the change of the constitution of the State. He gave his influence and active exertions to secure the passing of a law providing for calling a convention to frame a new constitution, which succeeded. After its passage, the leading men of both political parties, notwithstanding the strong political excitement prevalent at the time, united in recommending that the convention should be composed of an equal number of each party. This recommendation prevailed in every county but one, which sent all Democrats, so as to give a majority to that party; but this only caused a sufficient number of that party to vote so independ-

ently on every question having a party bearing, that not only were the officers elected from both parties, but the constitution was so framed as, if not to steer clear of any party tendency, rather to lean against the Democrats. One of the temporary provisions adopted, provided for the continuance in office of "the present governor, chancellor, and ordinary, or surrogate general and treasurer, until successors elected or appointed under the new constitution should be sworn or affirmed into office." By virtue of this provision, Governor Haines continued in office until the inauguration of his successor, Charles C. Stratton, in January, 1845.

The cases decided by Governor Haines as chancellor, will be found 3 Green's *Chan. Reports*. His opinions were carefully prepared, and were generally satisfactory.

He declined a nomination as candidate for governor at the first election held under the new constitution; but in 1847 he was selected by the Democrats to lead their ticket, and was elected by a respectable majority. In his inaugural address and his message, he reiterated his recommendations in favor of education by means of public and free schools. He strongly recommended a normal school for the education of teachers, a measure that did not then obtain the favor of the legislature, but which not long afterwards was adopted, and has proved of great public benefit. During this term of service the governor was no part of the judiciary of the State, and of course the person holding the office could not follow the profession of a lawyer. But when his constitutional term expired, he resumed the practice of law, and was occupied in it until November, 1852, when, having been previously

nominated as a justice of the supreme court, and confirmed by the senate, he took his seat on the bench ; and being reappointed, held that office fourteen years.

Until he was governor the second time, I had but little acquaintance with him ; but from that time, and especially while we sat together on the bench, our friendship was warm and unbroken by the slightest disagreement. As a judge, although not entitled to rank among the most eminent for acuteness or learning, he was highly respectable. Always anxious to do justice, he rarely failed to ascertain and give preponderance to the merits of a cause ; and by his courteous deportment, as well as by his sound judgment, he merited and obtained the confidence and respect of suitors and their advocates. But few judges were ever freer from the influence of passion or prejudice. For several years he presided in the Newark circuit, the most important and difficult perhaps of any in the State ; and left it greatly respected by the bar, who expressed their feelings by a strong testimonial of their regard.

Governor Haines is one of those old Federalists, who, having become earnest supporters of General Jackson, continued afterwards to act with the democratic party. But he has always had the independence to refuse his support to candidates of that party he considered unworthy of support ; and well would it be for our country if there were more to imitate his example in this respect. While on the bench, both of us abstained from any active interference in political arrangements, contenting ourselves with voting for such candidates as upon the whole we judged best entitled to our support, and most likely to represent our principles. We, of course, often counseled to-

gether, and were generally like minded. In a letter to me, in reference to one of the most difficult questions we had to decide, he remarked, "When the democratic convention divided at Charleston, I became impressed with the belief that the extreme men of the South, nominally Democrats, were willing to coalesce with the abolitionists of the North, to provoke a secession of the southern States, and I feared we should become the victims of ultra men of both parties, and be compelled to settle by force of arms what was clearly the subject of fair and honorable negotiations, although hopeless of success, I travelled sixty miles and back to cast a vote for the 'Union democratic ticket,' for the reason, chiefly, that the election of Lincoln as a sectional candidate might precipitate war, and I wished to make my protest against it." I had myself given the same vote, and for the same reason.

Continuing after the election of Lincoln to oppose every measure likely to produce a war, and earnestly desirous that the measures proposed by the peace conference might be so far adopted as to secure peace; when Carolina and other States formally seceded, and Sumter was attacked, he felt too strongly moved by the blows thus aimed at the Union and the life of the nation, not to oppose them, and did what he could to sustain the government, although many of its measures were such as he could not approve. He exerted his influence in raising troops for the Union army, and for that purpose attended meetings of the citizens of his county, composed largely of Democrats, and urged the importance of filling the ranks, calling attention to the admonitions of Washington and Jackson, in regard to the duty of maintaining the union

of the States, and the duty incumbent on every good citizen to aid in repelling every effort to destroy it. With his entire approbation, his son-in-law and his two sons entered into service, one of the latter sacrificing his life in the conflict.

When McClellan was nominated in opposition to the reëlection of Lincoln, he gave him his support, giving to me, as among his reasons, "I think the measures of the administration tend unnecessarily to protract the war; many of its partisans are fattening on the spoils, and plundering the nation, and McClellan has been persecuted for his political opinions." Afterwards he voted for Seymour, although without hope of success, as in every respect preferable to a military chieftain whose recommendation was military success, which under the circumstances no commander of the most ordinary talent could have failed to achieve. And he has since been steadily opposed to most of the measures of reconstruction adopted by the Republican party, as not only in violation of the Constitution, but as threatening to perpetuate feelings of disunion and hate, the evil consequences of which in the future may be destructive of that cordial union between the different and diverse sections of our country, so essential to the safe and harmonious action of a federal republic.

Carefully educated as a Presbyterian, Governor Haines became a member of the Church in early life, and has been for many years a ruling elder. He was prominent as a member of the General Assembly in all the measures adopted for uniting the two branches of that Church, and was one of the committee to whom the difficult legal questions that arose were referred, and which they settled so satisfactorily.

As a member of the Bible Society, of Sunday-school and other meetings of a religious or benevolent character, he has always been prompt to render the aid of his influence and his active exertions; and he still continues much occupied with such engagements; continuing also to some extent his business as a lawyer.

In 1845 he was appointed one of the commissioners to select a site for the State Lunatic Asylum, established near Trenton, and was a member of the first board of managers of that institution. In 1865 he was made a commissioner to select a site for a "Home for Disabled Soldiers," and subsequently one of its managers. In the same year the legislature provided for the establishment and organization of a State "Reform School for Juvenile Delinquents," located at Jamestown, and he was appointed one of the board of trustees, and was made and still continues to be the president of that body.

By a joint resolution of the legislature in 1868, he was appointed one of the commissioners "to examine the system of the existing State Prison of this State and similar institutions of other States, and to report an improved plan for the government and discipline of the prison." In October, 1870, he was one of the commissioners appointed by Governor Randolph, to the National Prison Reform Congress, held at Cincinnati, and by that body was appointed one of a committee charged with the duty of organizing a national prison reform association, and an international congress on prison discipline and reform, to be held at the city of London in 1872. In the organization of the National Prison Reform Association, he was made one of the corporators, and a vice-president. For many years he has been one of the board of trustees of Princeton College.

CHAPTER IX.

JUDGES DURING AND SOON AFTER THE REVOLUTION.

SAMUEL TUCKER. ROBERT MORRIS. DAVID BREARLY. JAMES KINSEY. ISAAC SMITH. JOHN CLEVES SYMMES. JOHN CHETWOOD. ELISHA BOUDINOT.

WITH the exception of the courts of which the governor was *ex officio* the judge, much difficulty was experienced in organizing the courts of the State, after the adoption of the new constitution. The governor was constituted the chancellor and ordinary, and there was no difficulty in holding that his power to appoint the officers, and to regulate the proceedings of the court of chancery and prerogative court, was the same as that of his predecessor, the royal governor. This power included the appointment of the times and places of holding the regular terms of the courts. During the war, and for some time afterwards, the business of the court of chancery was not important; but as the orphans' courts of the counties had not been established, the disputes which arose in relation to wills and to the estates of deceased persons, devolved for settlement upon the governor as ordinary in the prerogative court, and this was by far his most important business as a judge.

Richard Stockton, having declined the appointment of chief justice of the supreme court, the legislature in joint meeting, a few days afterwards, elected John

DeHart to that office. But although he wrote a letter accepting the appointment, for some reason which does not appear he declined to enter upon its duties. At the same time that DeHart was chosen chief justice, namely, September 4, 1776, Samuel Tucker and Francis Hopkinson were elected associate justices. Mr. Hopkinson, being a delegate to the Continental Congress, declined; but Mr. Tucker accepted, took the oath of office, and in November held a term of the court. The last court at which the colonial justices, Frederick Smyth, chief justice, and David Ogden were present, was held in May. In consequence of this suspension of the regular terms of this court, and a like interruption of the stated terms of the courts in most of the counties, acts of Assembly were passed reviving and continuing the process and proceedings depending, as fully and effectually as if the said courts had regularly met.

SAMUEL TUCKER was not a lawyer, but had held many important public stations, and was a man much respected, and of great influence in Trenton, in the immediate neighborhood of which he resided. He had been sheriff of the County of Hunterdon, was a member of the Assembly in 1769, and was elected afterwards, in 1772, as a member of that body,—the last under the provincial government whose functions were put an end to by the Revolution. He was an active member, and president of the different provincial congresses, and signed the Constitution of 1776 as such. He was also treasurer of the State, and as such had a large amount of the paper currency and other valuable property in his custody, which, in an affidavit he laid before the legislature in February,

1777, he alleged were taken out of his possession in the previous December by a party of British horsemen, who took him prisoner and detained him until a protection was obtained from Colonel Rahl, who was killed at Trenton shortly afterwards. This transaction, the accuracy of his statement being disputed by Governor Livingston, occasioned him to appear before the legislature and resign his commission. His weakness in taking advantage of the offer of British protection during the panic which prevailed so extensively previous to the capture of the Hessians at Trenton, was attributable perhaps to the fact that his wife was an English lady. It is certain that he thus forfeited his character as a patriot, and died in 1789 still under the cloud.

In February, 1777, the joint meeting elected ROBERT MORRIS as chief justice, and ISAAC SMITH and JOHN CLEVES SYMMES as associate justices of the supreme court, and they all entered upon the duties of these offices, and appear afterwards to have opened the court and sworn a grand jury, as was the custom then, at the regular terms held in April, May, September, and November. Morris was a son of Robert Hunter Morris, chief justice from 1738 until his death in 1764, the particulars of which are stated by Judge Field in "Provincial Courts of New Jersey," page 155. In 1779 he resigned, but for what reason does not appear. His residence was in New Brunswick. In 1790, upon the death of Judge Brearly, he was appointed by President Washington judge of the district court of the United States for New Jersey, an office which he held until his death in 1815. During the latter part of the time, his health was so bad that no district

court was held. The business then required to be done in that court was so unimportant that the failure of the judge to attend occasioned no special inconvenience.

The following letter was addressed by Chief Justice Morris to Governor Livingston, which I copy from the Revolutionary Correspondence published by order of the legislature of New Jersey in 1848, because it shows us something of the condition of judicial affairs at the commencement of the Revolutionary War:—

“ NEWTON, June 14th, 1777.

“ SIR: Inclosed your excellency has a list of the convictions and the judgments thereon, at this very tedious and I would have said, premature court, if the council had not thought expedient on mature deliberation to have appointed it. I had the pleasure to find Mr. Justice Symmes here at my arrival, and confess if I had supposed the coucile would have spared him for the business, I would not have travelled post over the mountains, through the rain and late into the night, on so very short notice.

“ Judges young in office, and not appointed for their legal erudition; associates but reputable farmers, doctors, or shopkeepers; young officers, no counsel nor clerk, for want of timely notice, which was not even given to the sheriff; and this in a disaffected county, both witnesses and criminals to be collected from all parts of the State. Thus circumstanced was a court of the highest expectation ever held in New Jersey; a court for the trial of a number of state criminals, some for high treason, a crime so little known in New Jersey that perhaps the first lawyer in it would not know how to enter judgment under our constitution. It would make an excellent paragraph in Gaine’s ‘ Veritable Mercury;’ no other printer could venture to publish it. In England, where treasons and rebellions are from immemorial usage become familiar terms, twelve learned judges from the first courts in the world, the members of privy council, and the first gentlemen in the kingdom, would have been sent on such an errand, and attended by old and experienced officers, and the ablest counsel at the bar, witnesses prepared, criminals to try, and seasonable notice given. But there the law is systematically administrated, and the ministers of it have settled forms of practice,

under an old constitution, well understood. And here we have a new modeled government, incomplete in parts, young in practice, and contingencies unprovided for.

“ Seriously, sir, with due submission to the council, I should have thought that for a court of such consequence, the members of the council, and some of the bar, ought to have been joined in the commission and requested to attend. We have sat with great patience, and have now closed the third week. Had it not been for the negligence or villainy of a rascally jailer, in suffering John Eddy, the only person indicted for high treason, to escape yesterday morning, I flatter myself we should have acquitted ourselves with tolerable success, and I hope have given satisfaction to the good people. This escape has given me much uneasiness, as I feel it will be undeservedly attributed to the inattention of the court. If the jailer was not privy to the escape, which did not appear, he is perhaps too severely punished. The court, in fixing his punishment, had a retrospective eye to past abuses of this sort, and thought an early example of severity would be likely to prevent them in future. He appears to be a young, simple fellow, unacquainted with the duties of his office, and not fully instructed by the sheriff, who has been almost daily cautioned on the subject. This jailer’s case is recommended to the mercy of your excellency and council, at such season as you shall judge expedient to exercise it. Mr. Attorney general will inform you of the particular demerits of the other convicts; some of them may hereafter be entitled to partial pardons; I wish I could say they were at this time. The little time the members of the court had for considering the commission after my arrival hurried us into a matter which, on further consideration, I confess I am not satisfied with; I mean the short time between the teste and return of the *precipe* for the grand jury. In England, I observe, fifteen days was ordered, on mature deliberation of all the judges, acting under the special commission of 1746. What the practice has been in New Jersey we do not know, as the clerk has none of the former circuit papers. If we have erred it is partly chargeable to the council, for appointing the court so shortly after issuing the commission, and they are bound to get the legislature to cure it. Had I half an hour’s time for thinking of the matter it should have been otherwise.

“ In your letter notifying me of this court, you observe that my not attending the court at Burlington had given uneasiness. Whatever private individuals might have thought, I am persuaded no

member of the legislature had the least right to expect my attendance. Two hundred miles a day is rather hard travelling ; and even that would not have done, unless they suppose me possessed of the spirit of divination. I accepted my present office to manifest my resolution to serve my country. I mean to do the duty of it while I hold it, according to my best judgment. Whenever the legislature think they can fill it more advantageously, the tenor of my commission shall not disappoint them.

“ The court rose without adjournment, as it was not supposed they would have occasion to sit again, unless Eddy should be taken. If this should be the case, I hope one of the other justices will be able to attend ; I fear I shall not. I wish the legislature, before another court sits, would take under consideration the judgment in high treason, old indictments at the suit of the king, and some other difficulties in former practice, which the attorney-general will mention to you. I have the honor, etc.,

“ ROB’T MORRIS.

“ GOVERNOR LIVINGSTON.”

To understand some of the difficulties referred to in this letter, it must be remembered that at this time, and for many years after, grand and petit jurors were summoned by virtue of venires directed to the sheriff for that purpose. Courts of oyer and terminer were held by virtue of special commissions issued by the governor and council, in pursuance of the authority contained in the commission from the king. The constitution of 1776 gave no such express power, and doubts were entertained whether the new governor and council could exercise it. They did do it, however, holding it to be justified by the act of the legislature passed soon after the meeting of the first legislature, which provided that the several courts of the State should be confirmed, established, and continued with the like powers, under the present government, as before the declaration of independency. Charles Petit, who was a lawyer, and had been the deputy clerk of the old council and of the supreme court,

writes to Governor Livingston, of the date June 15, 1777:—

“ You will receive herewith a draught of a commission of oyer and terminer, which I have made from one of the old forms; it is a translation as literal as the change of style will admit. I send also, by way of cover, the draught of the late commission for Sussex, so that you may have an opportunity of comparing them. On further consideration (although I have had no opportunity of examining books) I am better satisfied that the courts of oyer and terminer may be legally held under such commission, if it were only by virtue of the act for reviving and establishing the courts of justice. The only doubt that remains is the appointment of assistant justices to those of the supreme court, as it may be said they ought to be elected by the council and Assembly; if so, it might be well at their next meeting to elect a set of associates for each county.”

In September, 1777, an act was passed directing that when any person should be convicted of treason, the sentence therefor should be the same as in a case of murder (that is, to be hung, instead of quartering); and that all persons, who before July 2d, 1776, had committed a crime not barred by the statute of limitation, might be proceeded against and punished as if committed against the State; and that all indictments found in the name of the king, should be prosecuted as if in the name of the State. Another act was passed expressly authorizing the governor with the advice of the council to constitute and appoint by commission courts of oyer and terminer as before, provided that only justices of the supreme court, and the judges and justices of the respective counties, should be appointed judges of such courts. By virtue of this statute special commissions continued to be issued until 1794, when an act was passed constituting these courts substantially as they are now held.

ISAAC SMITH held the office of associate justice of the supreme court four terms, twenty-eight years in all, longer than it has been held by any other person. He was a physician, but appears to have made himself a pretty good lawyer. He was an ardent Whig, and was a colonel of militia at the commencement of the Revolutionary War. When his fourth term of office expired in 1805, party spirit ran high ; and as he was a Federalist, William Rossell was elected by the joint meeting held the preceding November, in his place. After this, Judge Smith, who resided at Trenton, was appointed the first president of the Trenton Banking Company, and continued to hold that position until his death, August 20, 1807, in the sixty-eighth year of his age. It is recorded on his tombstone, that, "With integrity and honest intentions, as a physician and judge, to the best of his ability, he distributed health and justice to his fellow-men, and died in hopes of mercy through a Redeemer."

JOHN CLEVES SYMMES was a lawyer from the State of New York, who, after a year's service in the northern army, and taking part in the battle of Saratoga, resided at Newton, in the County of Sussex. He was a delegate to the Provincial Congress from that county, and took an active part in framing the state constitution in 1776. He was appointed one of the justices of the supreme court in February, 1777. In 1784 and 1785 he was a delegate to the Continental Congress at Philadelphia, still retaining his position in the supreme court.

One of his letters to Governor Livingston, detailing his proceedings in the courts of *oyer and terminer*

of Hunterdon and Cumberland in 1778, will be found in the "New Jersey Revolutionary Correspondence," page 135. Several persons were convicted of treason and sentenced to death; but whether any of them were executed, is now unknown.

He presided in 1782 at the court held in Westfield, Essex County, for the trial of James Morgan, arraigned for the murder of Rev. James Caldwell. The shooting of this gentleman was one of those tragic events of the Revolution which excited the deepest sympathy of the community. He was the Presbyterian minister at Elizabethtown, and a zealous Whig, and was chaplain of the northern army in the fall of 1776. He returned to the State, was incessantly engaged in his parochial and public duties, and was perhaps the most popular man with the army and the people generally in his neighborhood. In 1780 his wife was shot in her house by British soldiers. On the 24th of November, 1781, he was shot through the heart, and immediately killed, at Elizabethtown Point, by Morgan, then in service as a militia-man, who claimed to have been on duty as a sentinel, and to have shot him because he persisted in passing him when required to stop. He was an Irishman and a Catholic; and in the excitement which still prevailed when he was tried, about six weeks after the act was committed, he had but little chance for his life, whether guilty or not. He was defended by Colonel DeHart; but after a full and fair trial, said by those present to have been remarkably solemn, the jury returned a verdict of guilty, and he was sentenced to be hung. This sentence was carried into execution on the 29th of January, after he had been conducted to the church, where a sermon was preached by Rev. Jonathan Elmer, according to a

custom then prevailing. The exact truth in regard to the killing of Mr. Caldwell was very difficult of ascertainment at the trial, and cannot now be known. Some said he was drunk, others that he was irritated because he had not been paid, and supposed Mr. Caldwell, who was an assistant commissary, was to blame. One witness testified that he heard him say he would pop Caldwell over. Many believed he was bribed to do it by the British or Tories, to whom Caldwell was very obnoxious.

In 1788 Symmes was chosen by the Continental Congress one of the judges of the north-western territory, and shortly afterwards removed to Ohio. In conjunction with Jonathan Dayton, Elias Boudinot, and several other Jerseymen, he purchased of Congress a large tract of land between the two Miami rivers, containing nearly 250,000 acres, and comprising the site of the present cities of Cincinnati and Dayton. He established his own residence at the North Bend of the Ohio, and laid out a city there, to be called after his own name. But in consequence, it is said, of the commander of the United States forces having fallen in love with a lady who resided at the place shortly afterwards named Cincinnati, and removing the troops there, that place became the great city. The North Bend was afterwards well known as the place of residence of General William H. Harrison, who married a daughter of Symmes. The latter died in 1814, at the age of seventy-two. His son of the same name promulgated the theory that the earth is hollow, and has inhabitants in the interior. He travelled extensively, found professed believers in his doctrine, and went so far as to have a petition presented

to Congress to fit out an expedition to enter the openings at the poles.

DAVID BREARLY was chosen chief justice to succeed Morris, June 10, 1779; having been induced to resign his commission as lieutenant-colonel in Maxwell's Brigade of the Jersey line, and to leave the army, then on its march under the command of General Sullivan to subdue the Indians in the western part of New York. He was a lawyer, and appears at the breaking out of the war to have resided at Allentown, in Monmouth County, and was about the age of thirty-four when appointed chief justice. He held the place nearly eleven years, having resigned in November, 1789, to accept the appointment of judge of the United States district court for New Jersey, an office which he held until his death in 1790, at the early age of forty-five.

No reports of the decisions of the supreme court while he presided have been published, but he had the reputation of a faithful, reliable judge, and was highly esteemed. In 1781 the college of New Jersey conferred on him the honorary degree of Master of Arts. In 1787, while still chief justice, he was appointed by the legislature of New Jersey a delegate to the convention which framed the Constitution of the United States, and he took his seat in that body, participated in its deliberations, and signed the instrument when it was agreed upon. He was afterwards a member of the State Convention which ratified it, and in 1788 was a presidential elector, and aided in electing General Washington. In 1783 he was made a vice-president of the State Society of Cincinnati, holding that office until his death.

Upon the resignation of Brearly, he was succeeded as chief justice by JAMES KINSEY, who was elected by the joint meeting in November, 1789, reëlected in 1796, and held the office nearly fourteen years, having died in 1803, at about the age of seventy years. He was the son of John Kinsey, who came over to New Jersey from England as early as 1716, and was that year a member of Assembly from the County of Middlesex, and speaker of the house several years. In 1730 and 1733 he was again speaker. About this time he removed to Philadelphia, where he was chosen a member, and for many years speaker of the Assembly of that State. He was an eminent lawyer, and was during the last seven years of his life chief justice of Pennsylvania.

Proud, in a note to his "History of Pennsylvania," says: "John Kinsey had very much practice and success in the law, and was for some time attorney-general; his long experience and great ability in the management of public affairs, his skill in the laws, and readiness for communicating his knowledge therein, often without fee or reward, and his tenderness to his friends, the people called Quakers, by whom he was deservedly esteemed a valuable member, in their religious society, with the exercise of many civil and social virtues, are said to have rendered his life very useful and valuable, and his death much lamented, as a great and universal loss to these provinces." He died in May, 1750, at Burlington, West Jersey, of an apoplectic fit.

James Kinsey married and settled in Burlington as a lawyer. In 1772 he was elected a member of Assembly from the city of Burlington, at that time entitled to two representatives in that body. He soon took a prominent part in the business of the legisla-

ture, and was considered the leader of the opposition to Governor Franklin. The treasurer of East Jersey, Stephen Skinner, a brother of Attorney-general Skinner, claimed to have been robbed on the night of July 21, 1768, of over six thousand pounds in coin and bills. Suspicions were entertained of various individuals, and some doubted whether there had been any robbery. In 1770, the Assembly took up the subject, and referred it to a committee, who reported that the loss should be attributed to the negligence of the treasurer, and that he should be held accountable for the loss; and to this report the Assembly agreed. The governor took part with Skinner, and a controversy arose on the subject, which was ended only when the Revolution had so far progressed as to make other questions more engrossing. Kinsey was put at the head of a new committee in 1773, to whom a message of the governor on the subject was referred. His report took a different view of the subject from that advanced by the governor. A letter written at this time throws some light on the controversy, by a statement that "The nomination of the treasurer by the house and removable only by them, is the darling object, to which every other consideration would be readily sacrificed; his (Kinsey's) fingers itch to take up the pen against the governor, but without the spirit of prophecy the event is easily to be determined."

The subject was resumed in 1774, when the committee reported: "It would give us pleasure to be able to join your excellency in opinion that the robbery of the eastern treasury had been brought to light; but after having considered your excellency's message, and examined the papers laid before us, we cannot but

think that this affair still remains in an obscurity which we must leave to time to unravel ; " and they go on to intimate that the subsequent course of the Assembly, in relation to the support of the government, would depend in some measure upon the governor's determination respecting Skinner's removal. This produced the resignation of the treasurer, and the legislature immediately nominated a successor, whom the governor, by the advice of the council, appointed. A suit was commenced against Skinner, but it was never tried ; he adhered to the royal cause, became a wanderer, and died in Nova Scotia.

Mr. Kinsey was appointed one of the delegates to the Continental Congress, and took his seat in that body at Philadelphia, on the 5th of September, 1774. But on the 22d of November, 1775, both he and John DeHart (afterwards appointed chief justice, but declined acting) requested leave of the House of Assembly to resign, and the house resolved that the reasons given by those gentlemen appear satisfactory, and that their resignation therefore be accepted. On the 2d of December this resignation was communicated to the Congress. In October, 1777, the legislature passed a law, enacting that no counsel or attorney should be permitted to plead in any cause, or to make any motion, or obtain a rule in any court, until he should have taken the oath or affirmation required of all other officers, that he did not hold himself bound to bear allegiance to the king of Great Britain, and that he would bear true faith and allegiance to the government established in this State, under the authority of the people. These oaths he declined to take, and was therefore obliged to relinquish his practice as a lawyer.

Notwithstanding this failure, Governor Livingston wrote to Samuel Allinson, July 25, 1778: "He is a very good man, though not the best hand on deck in a storm." And to Kinsey himself, the governor wrote on the 6th of October, 1778: "As I find myself writing to my old friend, I cannot help embracing the opportunity to express my concern at your standing so much in your own light, as to forego your practice, rather than submit to a test, which all governments ever have, and ever will impose upon those who live within the bounds of their authority. Your voluntary consent to take the test prescribed by law, would soon restore you to the good opinion of your country (everybody allowing you, notwithstanding unaccountable political obliquities, to be an honest man), and your way to the magistracy would doubtless be easy and unincumbered." It is probable that his being a member of the Society of Friends had something to do with his scruples about the oath, as they were, except a few dissentients at Philadelphia, opposed to the war. When he resumed his practice, I have not been able to learn.

His election as chief justice took place during the life of Governor Livingston, who was no doubt not only satisfied of his fitness for the office, but of his substantial adherence to the cause of the country. Coxe's Reports begins with his decisions, and we have thus some means of judging as to his legal character. I think his printed opinions confirm, what I understood from Mr. Griffith and other lawyers who had been in practice during his time, that he was well versed in the doctrines of the law, and of unsuspected integrity; but he was not a man of high intellect. His successor, Kirkpatrick, who sat on the bench with him three or

four years, says of him, in reference to the law of real estate as understood and administered in New Jersey, that he had acquired his knowledge of it "especially from his learned predecessor, Chief Justice Kinsey, the accuracy of whose knowledge upon subjects of this kind will be disputed by none who knew him" (2 Halst. R. 13). The opinion in the case of *Den vs. Clark and Tilcar* (Coxe R. 356) affords perhaps as good a specimen of his composition as any other, and is well worth a careful persual.

The associates of Chief Justice Kinsey were ISAAC SMITH and JOHN CHETWOOD, until 1797, when Mr. Chetwood, as we are informed in a note to the case of *Allen vs. Hickson* (1 Halst. R. 409), written, probably, by Chief Justice Kinsey, or perhaps by Mr. Griffith (for I understood that Mr. Coxe, who was Griffith's son-in-law, prepared his reports from materials mainly prepared by him, and what had been intended for a second volume were furnished to Mr. Halstead), "was compelled by continued and increasing bad health to resign his seat as one of the justices of this court, a situation which he had held for many years with distinguished credit to himself, and satisfaction to the public. Andrew Kirkpatrick was elected to supply the vacancy occasioned by the resignation of Mr. Justice Chetwood, and took his seat on the bench in November term following."¹

In 1798, an act was passed authorizing the appointment of an additional justice, and ELISHA BOUDINOT

¹ Mr. Chetwood was of Quaker descent, and the tradition in his family is that he resigned, principally because of his unwillingness to sentence a man to death. He resided at Elizabethtown, and died in 1806, aged seventy-two. William Chetwood was a son.

was elected, and held the place during one term of seven years. He was a descendant of a Huguenot, a brother of Elias Boudinot, distinguished as a member of Congress during and after the Revolution, and well known to the religious community as the first president of the American Bible Society. Elisha was born in 1742, and was called to be a sergeant-at-law in 1792, having long before become an attorney and counselor. He settled in Newark, and was an eminent lawyer there. During his time, the supreme court consisted of a chief justice and three associates; but in 1804 the law of 1798 was repealed, so that until 1838 there were only two associate justices. Boudinot died in 1819.

CHAPTER X.

JUDGES I HAVE KNOWN.

BUSHROD WASHINGTON. WILLIAM GRIFFITH.

BUSHROD WASHINGTON, one of the justices of the supreme court of the United States, was the presiding justice of the United States circuit court for the district of New Jersey, from his first appointment in 1798 until his death in 1829. When I became the attorney of the United States for the same district, in 1824, I was introduced to a considerable practice in his court, and thus became well acquainted with him.

He was a favorite nephew of General Washington, who devised to him his estate at Mount Vernon. He studied law, under the direction of his uncle, with James Wilson, of Philadelphia, an eminent lawyer, afterwards one of the justices of the United States supreme court. Having completed his studies, he commenced business in Virginia, his native State, acquired a large practice, and had a high reputation as a lawyer, and in the house of delegates and convention of that State. At the early age of thirty-six, he was nominated by John Adams, and confirmed as one of the justices of the supreme court; and whatever fault may be found with the general character and political action of that President, it cannot be denied that he deserved the gratitude of the people for

raising to the bench of the highest judicial tribunal of the nation two such men as John Marshall and Bushrod Washington.

If any tribunal ever established by man deserves the epithet *august*, it is undoubtedly that court of which Bushrod Washington was a worthy member. Unlike any other court now existing, or that ever did exist, it sits in final judgment, not only upon the rights and fortunes of individual citizens, but over the authority, proceedings, and privileges of sovereign States, and over the authority, proceedings, and privileges of the coördinate departments of that government which is paramount to all. The rights and the safety of each member of this majestic confederation; the prosperity, the honor, and the destiny of the whole, depend greatly on the learning, intelligence, the integrity and unfettered independence of this court. In my early days, the party then in power, to which I belonged, but with which I never agreed in this matter, was accustomed to disparage this tribunal, because it lay across their path when they attempted to carry out favorite measures, interfering with the constitutional rights of the citizen. And now, as in times past, history repeats itself. We find many ardent supporters of the party which rules the country imitating the bad example they formerly so justly condemned, and for the same reason.

The influence of the supreme court, as the great balance wheel of our nicely adjusted but complex government, is mainly moral. It needs the cordial support of every intelligent citizen, and especially of every lawyer and jurist; and happily, although it cannot claim to be infallible, yet it has always deserved such support. The decisions in regard to the

power of Congress to incorporate a national bank, and in regard to slavery, as well as in other important questions, may have been of doubtful correctness ; but they were always of a conservative character, and bad results have been obviated by safe political action within the Constitution, or by its amendment. When the court decides, as it so frequently and properly has, in regard to the action of the separate States, it encounters no great difficulty, because the States have no efficient means of resistance, nor do I think it desirable they should have. But when the court attempts to check the action of the legislature, which can by its laws, if not resist, yet impede its action, then the importance of forbearing undue complaints and of faithful support becomes apparent. The executive veto is of great importance, but it can seldom be relied upon to do more than resist encroachments upon its own prerogatives, and is not always powerful enough even for that. An independent tribunal, if properly respected, can be in the future, as it has been in the past, a most useful check upon legislation.

“ I believe, before Heaven,” said John Quincy Adams, while President of the United States, “ that the durability of the government depends upon the court.” And a greater than Adams, President Washington, declared : “ Impressed with a conviction that the due administration of justice is the firmest pillar of good government, I have considered the first arrangement of the judicial department as essential to the happiness of the country, and to the stability of its political system.” And writing to notify Mr. Jay of his appointment as chief justice, he remarks : “ I have

full confidence that the love which you bear to our country, and a desire to promote the general happiness, will not suffer you to hesitate a moment to bring into action the talents, knowledge, and integrity which are so necessary to be exercised at the head of that department, which must be considered the key-stone of our political fabric."

Judge Washington had great fitness for his high office. He was rather under size, and without any pretension to mere personal dignity; but his moral and intellectual qualities, his learning, his integrity, his unwearied, patient attention, the knowledge that every case would be subject to the most searching and penetrating investigation, made him always the object of profound respect. He had that temperate but inflexible firmness which resulted from confidence in himself, and is the courage of superior minds. His manners, and his language, spoken and written, were simple and free from anything approaching to arrogance. He had that great faculty so important for a judge, and so difficult of attainment, of regarding only the essential merits of a cause, without being influenced by any of its surroundings. He knew the cause only by the evidence, and decided it by the law.

I concur entirely in the opinion expressed of him by Judge Hopkinson, in the beautiful eulogium delivered to the bar of Philadelphia, after his decease:

"He was wise as well as learned, sagacious and searching in the pursuit and discovery of truth, and faithful to it beyond the touch of corruption or the diffidence of fear. He was cautious, considerate, and slow in forming a judgment, and steady, but not obstinate, in his adherence to it. No man was more willing to listen to an argument against his opinion, to receive it with candor, or to yield to it with more manliness if it convinced him of an error. He was

too honest and too proud to surrender himself to the undue influence of any man, the menaces of any power, or the seductions of any interest; but he was as tractable as humility to the force of truth, as obedient as filial duty to the voice of reason. When he gave up an opinion, he did it, not grudgingly, or with reluctant qualifications and saving explanations; it was abandoned at once, and he rejoiced more than any one at his escape from it. It is only a mind conscious of his strength, and governed by the highest principles of integrity, that can make such sacrifices, not only without any feeling of humiliation, but with unaffected satisfaction.

"As every safe judge must be, Judge Washington was respectful of the authority of adjudged cases, but equally discriminating and careful in applying them. He had not the weak and dangerous ambition which would shape the law to its own motions and purposes, nor the contemptible vanity to disregard the wisdom and learning of others. In fact, the old black letter law had great charms for him, and he was well versed in it.

"Honesty, sincerity, and good faith were the elements of his public, as they were of his private conduct and character. There was a frankness, sometimes a playfulness in his manner, which nevertheless detracted nothing from the respect due to his station. He scorned the tricks and solemn contrivances by which inferior men endeavor to attract attention and seem to be wise. There was nothing artificial about him, but he showed his opinions, his feelings, and himself, as in truth they were. He came to the bench of the supreme court at a period when its duties were exceedingly arduous and interesting. The convulsions of Europe, which agitated this country also, gave birth to questions of national and constitutional law, which involved in their consequences the honor and peace of our country, and which it was the right and duty of this court to hear and determine. Many of these questions, arising out of unprecedented circumstances in the positions and pretensions of the belligerent nations of Europe, and from our own peculiar relations with all of them, were new and difficult in themselves, and rendered more so by the dangers which threatened us on every side, and beset every course we might take. In such a state of things, when the passions of the people were agitated and inflamed, and these passions were necessarily communicated to our popular assemblies, we may imagine the importance of having in our system of government one department, which, firmly based upon a rock, lifted its head above the storm, and controlled its fury. Independent, truly inde-

pendent, in all times and under all circumstances, it yields neither to the influence of the executive, nor to the clamor of the multitude, but, standing upon the Constitution, it defends it against every attack ; and let it never be forgotten, they will stand or fall together."

One case tried before him at Philadelphia, in 1809, exhibited his peculiar qualities in a very striking and instructive manner. It was an indictment against General Bright and others, for obstructing the process of the United States court. This case grew out of a contest respecting certain prize money, between the State of Pennsylvania as the owner of a privateer, and an individual of the name of Olmstead. A certain portion of this money had been paid to David Rittenhouse, as treasurer of the State, and at his death remained in the hands of his daughters as executors. The case having been carried into the continental court of appeals, that court reversed the decree of the state admiralty court, and awarded all the money to Olmstead. He obtained a decree in the court of admiralty of the United States, for the payment of this money to him. The legislature of the State then passed an act requiring the executors of Rittenhouse to pay the money into the state treasury ; and this act was passed upon the ground that the court of appeals had no jurisdiction of the case, and that its decree of reversal was null and void. This act also required the governor of the state to protect the persons and property of the lady executors from any process which might be issued out of the courts of the United States.

In this state of things the case was submitted to the supreme court, which, after a hearing, commanded the district court to issue the required process to enforce its judgment. This was done. But by order of the gov-

ernor of the State, General Bright called out and took command of a body of the militia, which surrounded the houses of the ladies, and then opposed with force the efforts of the marshal to serve his process. But as might be supposed the ladies were not quite pleased to be thus made prisoners, and it was said soon contrived to surrender themselves to the custody of the marshal. At any rate the process was served, and the State, instead of continuing the war, relieved the ladies by paying the money. For the resistance, the general and some other of the officers were indicted and brought to trial. The learning, the patient hearing, the clear and discriminating sagacity, and the unhesitating fearlessness of the judge, won for him universal approbation. His charge was a fine manifestation of his power to impress a jury with their duty to conform to the law; and the defendants were found guilty, and adequately punished.

It was a great pleasure to be concerned in a cause before such a judge. Always calm and self-poised, his address to the lawyers, as he usually called the members of the bar in court, was invariably kind and pleasant. When I had in one case failed to prove some of the essential allegations of the declaration, and a motion was made by the adverse counsel to nonsuit the plaintiff, after stating very clearly his view of the law, he said: "Mr. Elmer, I shall be obliged to order the plaintiff to be called, unless you prefer, as is your right, to take the verdict of the jury, and in that case I shall of course direct them to return a verdict in accordance with our opinion of the law, and I must warn you that juries seldom in this court dissent from our opinion." This was in conformity to the correct practice, which, however, has been departed from in

the courts of this State, whether wisely or not, remaining to be seen. I did not think it expedient to trouble the jury, and therefore submitted to the nonsuit.

Judge Washington was accustomed to charge the jury very fully and explicitly, seldom leaving it doubtful how he thought the verdict should be rendered. I remember that in a case which involved merely a question as to the running of a boundary line, he mistook the facts, so that the jury, upon which there happened to be a very competent surveyor, found directly contrary to his charge. He received the verdict with very evident surprise, but said quietly that he would look into the facts of the case very carefully. After doing so, he promptly acknowledged his error, and thanked the jury for their care to be right, in a matter of fact which belonged to them to decide. Most judges would have done substantially the same thing; but his manner of correcting his own error was very simple and pleasant.

The four volumes of Washington Circuit Court Reports contain most of the opinions delivered in the circuit courts of Pennsylvania and New Jersey during the time he presided, and deserve a careful perusal. His style is, in my opinion, a fine model of plain, perspicuous English, resembling that of Addison and Blackstone. These volumes were carefully made up in manuscript, and carried with him, before they were printed, to the circuits, lest, as he would sometimes very pleasantly remark, he might some time inadvertently overrule himself, which would be worse than merely overruling some other judge.

The case of *Corfield vs. Coryell*, reported in 4 Wash. C. R. 371, decided in Philadelphia, grew out of

transactions in New Jersey, and has been considered ever since as establishing the right of a State to prohibit the inhabitants of other States from catching oysters in oyster beds within its limits. A vessel owned in Philadelphia was seized in the year 1820, while engaged in catching oysters in Maurice River Cove, in pursuance of the act originally passed as early as 1798, now the 7th section of the act for the preservation of clams and oysters, revised in 1846.

Several of the persons engaged in making this seizure were sued in Philadelphia by the owners of the vessel. One case was tried before Judge Ingersoll in the district court of the city, and under his direction the jury rendered a verdict for the defendant. The case against Coryell was removed into the circuit court of the United States, Charles and Joseph R. Ingersoll being counsel for the plaintiff, and Messrs. Condy, Newcomb, and M'Ilvaine for the defendant, who was a citizen of New Jersey. The great point insisted on for the plaintiff was, that the act of the legislature of New Jersey was in violation of that clause of the Constitution of the United States, which provides that "the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States." The judge held that the privileges and immunities protected by this clause were only those which are in their nature fundamental, which belong of right to the citizens of all free governments, and which have been at all times enjoyed by the citizens of the several States which compose this Union, from the period of becoming free, independent and sovereign, and did not extend to the privilege of interfering with the rights of the citizens

of a State to have the exclusive privilege of catching fish and oysters within its waters. The expense of this litigation was defrayed by the State. I was counsel in New Jersey for the persons engaged in the seizure, and in fact participated in making it.

I have in my possession, however, one elaborate opinion, the last I believe that he prepared, just before his death in 1829, which was not printed. The case was argued before him and Judge Rossell, at Trenton, about a month before he died, by George Wood for the defendant, and by myself for the plaintiff. The case had been removed from the state court by the defendant, a citizen of Pennsylvania, for the express purpose of obtaining a decision, that where a bond had been assigned and the payment guaranteed by the assignor, if the assignee was directed to proceed against the obligor, his omission to do so would be a sufficient defense to an action upon the guarantee, which in this case was under seal. The judge, however, adhered to the principle established by the supreme court of this State, in the case of *Stout vs. Stevenson* (1 South. R. 178), namely, that a general guarantee or warranty of payment by the assignor of a bond is absolute and coextensive with the instrument assigned, so that the warrantor becomes a surety for the payment of the money at the day, if it is assigned before the day of payment, and on demand, if it is assigned afterwards.

A circumstance occurred in this case which amused and gratified me very much, and very naturally, considering who the counsel was to whom I was opposed. There were thirteen pleas, to most of which there were demurrers. The assignment and covenant of warranty, upon which the action was founded, had

been made after the penal bond assigned had become due. One of the pleas set up an accord and satisfaction, not true in fact, but of course admitted to be true by the demurrer. After the demurrer was put in, but just before the argument, I had happened to see the case of *Strang vs. Holmes* (7 Cow. R. 224), in which the court had held, I thought for good reasons, that since the statute which provides that, on bringing the principal, interest, and costs into court at any time pending an action upon a bond with a penalty, it shall be deemed a full discharge of the bond (copied substantially in New York and New Jersey from 4 and 5 Anne, ch. 16. See Nix. Dig. Obligation, sec. 9), it was unimportant whether an accord and satisfaction took place before or after the bond became due. Knowing that Wood was no case hunter, and depended rather upon his knowledge of the general principles of law, and his wonderful ability in applying them, I remarked to him as we came up the stairs to the court-room: "Wood, you ought to beat me on that accord and satisfaction plea, but I don't think you will; you don't know all the sharp points of the law." From his reply I saw at once that my supposition that he had not seen the case in Cowen, it having been recently published, was correct; and so it proved. Upon the argument I relied on the old authorities, which held the maxim *solviter eo ligamine quo ligatur*, to which he had no satisfactory answer.

When the judge's opinion was received, it appeared that he had overruled the plea as contrary to the maxim cited, and he commenced by remarking: "It is believed that the industry of the counsel who argued this cause has brought to the view of the court

all the cases which have a bearing on the question." I had the laugh against Wood, but did not feel quite satisfied that I had done right in withholding from the court my knowledge of a respectable authority precisely in point, although against me. Afterwards I submitted this doubt to Chief Justice Ewing, who replied, very promptly, that it was no part of my duty as an advocate to find authority for my opponent. I cannot help thinking, however, notwithstanding this high authority, that it would have been better, although the question involved was purely technical, and did not touch the merits of the cause, to have apprised the court of the decision, and answered it if I thought it susceptible of an answer.

In private intercourse, the judge was a most agreeable companion, sometimes telling a good story with much effect. One of his stories, which he delighted to tell, with much half-suppressed merriment, as it referred to a great man, and I believe has never appeared in print, it may not be amiss to repeat. Chief Justice Marshall was accustomed, he said, to relate of himself, that once on his way to hold the circuit court at Raleigh, his horse and gig became so disabled that he was obliged to hire a strange horse and ride him. This horse turned out to be a racer, and when he came to a stretch in the road not far from the town, where he had been accustomed to run, he set off at full speed, and could not be controlled by his rider, who was encumbered by his cloak; and

" So stooping down, as needs he must
Who cannot sit upright,
He grasped the mane with both his hands,
And eke with all his might.

“The wind did blow, the cloak did fly,
Like streamers long and gay,
Till loop and button failing both,
At last it flew away.”

And thus the grave chief justice made his entrance into the town where he was to preside in court, much to the surprise as well as amusement of the spectators.

He never brought with him to Trenton his family coach and servants, but came in a hired vehicle, with hired servants, except a female servant of Mrs. Washington, who was in the habit of accompanying him, although a confirmed invalid. When not engaged in court, he devoted himself to her; and I am happy to be able to say that I believe he was a sincere Christian. I know that he had the habit of regularly reading prayers in his private room.

If I was asked, Who of all the judges you have known do you consider to have been the best fitted for that high office, taking into the account integrity of character, learning, deportment, balance of mind, natural temper and disposition, and ability to ascertain and regard the true merits of a cause, as determined by the law that he was called to administer, I should say Bushrod Washington. And next to him I should place Charles Ewing. This is my individual judgment; and I have formed it without forgetting that it has been my happy lot to sit on the bench as the associate of judges who have adorned their stations, and who have always treated me with the kindness and respect due to an elder brother.

WILLIAM GRIFFITH was a judge of one of the circuit courts of the United States for a short time, at too

early a date for me to have any personal knowledge of him in that capacity. I became acquainted with him in the year 1820, when he was a prominent member of the house of Assembly, taking an active part in the revision of the laws of the State made in that year. In 1823 he was again a member of that house, in which I served with him.

Mr. Griffith was the son of Dr. John Griffith, who lived at Boundbrook, in Somerset County, and was born in the year 1766. He studied law in the office of Elisha Boudinot, at Newark, and in conjunction with Josiah Ogden Hoffman, afterwards a distinguished lawyer in New York, Gabriel H. Ford, Alexander C. McWhorter, and Richard Stockton, who were law students in the same town, founded the "Institutio Legalis," a sort of moot court, which was kept up for many years, and which helped to prepare them, and others who succeeded them, for those forensic encounters in which they became famous. What the preparatory training of Griffith was, I have not been able to ascertain; but it is certain that he became a learned lawyer, and a very able advocate. He was licensed as an attorney in 1788, and in due time as a counselor, and in 1798 was called to be a sergeant. He resided and married at Burlington, when he went there the county town, and for many previous years the capital of West Jersey. It remained a favorite residence of lawyers in good practice during the first quarter of the present century, but has since been nearly abandoned by the profession.

The Society of Friends were perhaps the most influential inhabitants of Burlington at this time, and as is well known, were much opposed to slave-holding. They were the main supporters of the New Jersey

Society for promoting the Abolition of Slavery; but Mr. Griffith as well as many other citizens were also members and active promoters of the cause. It appears by a memoir of "Quamino Buccau, a pious Methodist," published by William J. Allinson, upon his death in 1851, that Quamino and his wife were the slaves of Mr. Griffith's father, and that he as the executor refused to allow them to be sold, but took them into his own service, and in 1806 had them formally manumitted.

Mr. Griffith soon acquired a large practice, and a deservedly high reputation as an advocate. I always heard him spoken of as indefatigable in his industry, and untiring in his devotion to his clients, sparing no pains to obtain success. He made himself thoroughly master of the land titles of New Jersey, and of the intricacies of the common law governing real estate. I had but little personal knowledge of his forensic efforts; but I have heard it stated that his addresses to juries were sometimes very powerful, and that upon one occasion he so wrought upon their sympathies as to bring them to tears by the simple repetition of the phrase, "Up to his knees in water; up to his knees in water."

He was one of the few lawyers of the State, who wrote and published for the benefit of the profession. In 1796, he published a treatise on the jurisdiction and proceedings of justices of the peace, with an appendix, containing advice to executors and administrators, the law of landlord and tenant, and other matters. He states in the preface to this work, that he had held the office of surrogate for some years, and had thus experience of the information required. This was a valuable book, of which three or four edi-

tions were published ; and being the production of an able lawyer, may on many questions be still consulted with advantage. In 1799, he published a series of essays, fifty-three in all, over the signature of "Eumenes," exposing the defects of the constitution of the State hastily adopted in 1776, and bearing on its face the evidence that it was expected by its framers to be temporary, and urging the election of a convention to revise it. The popular feeling, however, was decidedly opposed to any change, so that the proposition to call a convention was voted down in the legislature. Indeed the fact that a change was mainly urged by lawyers, seems to have been thought an all sufficient reason, with the popular party at that time, and for years afterward, to resist every attempt to remedy its defects.

At the close of the administration of John Adams, and after the election of Mr. Jefferson, an act of Congress was passed, very proper in itself, but hastened as a party measure and by a party vote, establishing six new circuit courts, with each a chief justice and two associate justices. Among the last acts of the outgoing President, was the nomination of these judges and their confirmation, at midnight, or as was said, after that hour, so that they were called midnight judges, all of the one party. For the third circuit, composed of the States of New Jersey, Pennsylvania, and Delaware, the judges selected were William Tilghman, of Pennsylvania, chief justice, afterwards for many years the distinguished chief justice of the supreme court of that State (appointed by Governor McKean, himself a Democrat); William Griffith, of New Jersey; and Richard Bassett, of Delaware. These were all capable men; but party feelings were

too highly excited to expect them to remain, and the result was, that the next year the law establishing these courts was repealed. It was strongly insisted, and not without reason, that this summary mode of displacing judges, appointed and commissioned as required by the Constitution to hold their offices during good behavior, was in the face of the letter and the spirit of the Constitution. Judge Bassett published in his own name a vigorous protest, drafted as I learned from himself by Mr. Griffith, which expressed the opinions of all the judges, although only one signed it. But it proved of no avail; no attempt was afterwards made to resuscitate the courts, or to compensate the judges. It happened then, as it has since, that the Constitution forms but a feeble barrier against the will of a large majority of the people, when disposed to carry out measures supposed to be for the public good.

The court held but two terms, in May and October, 1801. The cases decided are contained in a small volume, entitled "Reports of Cases adjudged in the Circuit Court of the United States for the Third Circuit," by John B. Wallace. The opinions, delivered principally by the chief justice and Mr. Griffith, appear to have been carefully prepared, but none of them are important now.

Mr. Griffith was but a young man when thus compelled to resume his business as an advocate; but he does not appear to have taken to it with any zealous energy. He soon engaged in large speculation in the sale of lands; and upon the breaking out of the war with Great Britain, in 1812, was induced to enter into the business of manufacturing woollen and cotton goods, of which he was entirely ignorant. The result

was the total wreck of all his property, and an incumbrance of debts, from which he was never able to free himself. His own experience as a debtor led him, when a member of the legislature, to prepare and to succeed in having enacted into a law the act passed February 23, 1820, entitled "An act to secure to creditors an equal and just division of the estates of debtors, who convey to assignees for the benefit of creditors." It became a law at a period of great pecuniary pressure, growing out of a return from the inflated currency prevailing during the war, to a currency equal to gold and silver; and put an end to the then very common and justly complained of practice of making assignments, which gave some creditors a preference over others equally meritorious. When I first knew him he was a broken down man; but as a member of the legislature, exercised a very powerful influence, most commonly, however, rather in a covert and indirect, than by an open advocacy of his favorite measures. This course was no doubt in part produced by his being so long engaged in the earnest and unsuccessful efforts of his party to obtain the ascendancy they had lost. He was among those Federalists who preferred Jackson to John Quincy Adams, but did not live to see him President.

About the year 1820 he engaged in preparing a work, of which volumes three and four were subsequently published under the title of "Annual Register of the United States," and which contained a very reliable account of the officers, laws, and regulations of each of the then twenty-four States. It was intended to continue this work by annual corrections, but he did not live to complete his plan. The laws and regulations of New Jersey will be found in the

fourth volume. I have always understood that the answers to the queries which form the text of this work were furnished by General Wall; but the notes, some of which are quite elaborate, were written by Mr. Griffith himself, and as aids for understanding the history of our state laws they are still valuable. As a general introduction to this work, he commenced "Historical Notes of the American Colonies and Revolutions, from 1754 to 1775," which was meant to aid in forming a history by the means of annals and of documents at large, of the government of the colonies to the peace in 1783. It was partly printed, but left in an unfinished state. Some copies were sold by his executors after his decease; but it is very little known. From a cursory perusal, I should say it is a valuable addition to the constitutional and legal history of the country. Among other suggestions in regard to the nature of the government of the United Colonies during the Revolution, I was much impressed by the remark, that the Continental Congress, although it sometimes adjourned, and its members were changed from time to time, was never suspended or dissolved, until it gave way to the Constitution in 1789, and that the articles of the confederation operated rather to restrict than to confirm or enlarge its power.

Upon the death of Elias B. Caldwell, early in 1826, Mr. Griffith was appointed clerk of the supreme court of the United States, expecting afterwards to reside at Washington, to which place his son-in-law, Richard S. Coxe, Esq., had removed; but he lived to fulfill the duties of that place but a short time, having died on the seventh of June of that year, a few months after

he had attained the age of sixty years. Coxe's Reports, of which only one volume was published, and which contains the earliest decisions of the supreme court of this State that were published, I have always understood were mainly derived from notes of the cases preserved by Mr. Griffith.

CHAPTER XI.

JUDGES I HAVE KNOWN.

ANDREW KIRKPATRICK. WILLIAM ROSELL. GABRIEL H. FORD.
GEORGE K. DRAKE. THOMAS C. RYERSON.

ANDREW KIRKPATRICK was chief justice of the supreme court when I was examined for license as attorney at law, in May, 1815. His associates were William Rossell and Mahlon Dickerson. Examinations were held at that time in the evening, at the hotel where one or more of the judges had their chambers, and were commonly followed by an entertainment furnished by the licentiates. The examiners were required to be of the degree of sergeants, and only members of the bar of the degree for which the examination took place were allowed to be present, as is still the rule. The practice of holding the examination at a tavern, which exposed the young men not only to a needless expense, but to a dangerous temptation, has been happily abolished; it now takes place, as is well known, during the regular sitting of the court.

At May term, 1818, when I was first admitted as a counselor, and thus permitted to appear before the court as an advocate, I was present at a scene the most extraordinary I ever witnessed in a court of justice. It occurred in the case of the State *vs.* Trumbull, reported in 1 Southard R. 139. It was an episode in the famous case of Ogden *vs.* Gibbons, referred

to in my reminiscence of Colonel Ogden. Trumbull was son-in-law of Gibbons, and commenced an action against him in New York, for an atrocious libel upon his own daughter, contained in a pamphlet he had caused to be printed, as was understood for the purpose of coercing her mother (an exemplary woman, who had been obliged to separate from him) and family to act in accordance with his wishes ; and it happened that this case was expected to come on for trial at New York at the same time the case of Ogden *vs.* Gibbons was noticed for trial at Newark. Gibbons caused a subpoena to be issued for Trumbull as a witness ; but he failed to appear when the case was called, and for that alleged reason Gibbons had the trial postponed.

The failure of Trumbull to appear was made the ground of an application to attach him for a contempt. Mr. Van Arsdale, as the counsel of Gibbons, moved for the rule, just before the adjournment for dinner, and Mr. Gibbons appeared in person to support the motion. Upon the opening of the court in the afternoon, Richard Stockton, on behalf of Trumbull, spoke in opposition to the motion. Instead of confining himself to the bare merits of the question — for besides the excuse for absence, which of itself would have been a sufficient answer to the application for the extraordinary proceeding of an attachment against a defaulting witness, which the court said had not been granted for twenty years, and which in the experience of more than fifty years I have never known to be asked for, it was not shown that the writ had been served within the jurisdiction of the court — he indulged in a most excoriating attack upon the character and motives of Gibbons, all

of which was richly deserved, but was very unwise on that occasion. The individual attacked was wholly regardless of public opinion, and in fact was much pleased to be afforded a desired opportunity of indulging the sarcasm and wit of which it soon appeared he was as great a master as his opponent.

As soon as Mr. Stockton had concluded, Mr. Gibbons, who was then a very large man, advanced in years, and enfeebled by debauchery, half rising from the large arm-chair on which he sat, begged permission to reply, and to be allowed to sit down. Chief Justice Kirkpatrick, with Judges Rossell and Southard, composed the court, and accorded the desired permission. Such another torrent of vituperation and sarcastic retort, mingled with flashes of real wit, I had never heard. Soon, not only the members of the bar present, although most of them venerated Mr. Stockton, sympathized with his client, and detested Gibbons and his proceedings, indulged in laughter at sallies of wit which were irresistible, in which the court soon joined, and at length the court-room resounded with shouts of laughter; and I well recollect that Colonel Joseph W. Scott, then full of life and vivacity, now the oldest member of the bar, the only survivor besides myself of those present, ran out behind the high circular rows of seats, then arranged for the jurors, witnesses, and spectators, the back of which was higher than his head, so as to conceal him from the view of the court, clapped his hands and danced about with unrestrained glee.¹

When the argument, if argument it could be called, was closed, we were all curious to hear how the court would treat the case. We were not disappointed in

¹ Since this was written Colonel Scott has died at the great age of ninety-three.

the result. After a short consultation, the chief justice resumed that dignity which was so natural to him, and with his clear, distinct, melodious voice, and well chosen diction, commenced by saying that probably some surprise might have been excited that the court did not interfere and suppress what was certainly a rather unseemly exhibition; but the court must confess that they felt some curiosity, in which it was presumed the bar participated, to know how a counselor of great reputed eminence from a foreign court was accustomed to manage his cases, and by what means he had acquired his reputation as an advocate. He then went on to deny the motion, for the reasons stated in the report by Mr. Southard.

Kirkpatrick was the grandson of Alexander Kirkpatrick, a Scotch Presbyterian who migrated first to Belfast in Ireland, and after a few years' residence there, sailed for America with his family in 1736. He settled in Somerset County, about two miles west of Baskingridge, and died in 1758. His second son was named David, who, soon after the death of his father, purchased the homestead of his brother, which, according to the law of that day, had descended to the eldest son. David Kirkpatrick, as described in the memoir prepared by James Grant Wilson, and printed for the chief justice's daughter, was a rigid Presbyterian of the John Knox school, plain and simple in his habits, of strict integrity and sterling common sense, of great energy and self-reliance. He lived to attain his ninety-first year; educated, with a view to his entering the ministry, one son at the College of New Jersey; knew of at least six grandsons who were liberally educated; and at his death, in 1814, left a numerous posterity to bless his memory.

Although he lived two miles from the church at Baskingridge, he preferred always to walk, while the family rode ; and when a member of the legislature, although he would commence the journey on horseback, he soon dismounted, and leading his horse, walked the remainder of the way to Trenton. Both as to the great concerns of eternity, and the things of time, he seems to have acted in the spirit of the short and comprehensive motto of the Kirkpatricks, so well adapted to every situation and condition of life, "*I mak sicker,*" I make sure. He was buried in a coffin made from the wood of a walnut-tree, planted by him in boyhood, and which he caused to be cut down a few years before his death, and kept for that purpose. His wife was Mary M'Ewan, a native of Argyleshire, who with her family crossed the Atlantic in the ship in which the Kirkpatricks took passage. She died 1795.

Andrew, the third son of David, was born in Somerset County, February 17, 1756, and spent his boyhood there. He received the best education the times afforded, and graduated at Princeton College in 1775, during the presidency of Dr. Witherspoon. He was accustomed to walk to and fro between his father's residence and Princeton, a distance of not less than thirty miles, carrying his homespun and home-made clothing in a small knapsack. His father had educated him with a special view to the ministry in the Presbyterian Church, and after his graduation he commenced a course of theological studies with the Rev. Mr. Kennedy, a celebrated Scotch divine settled at Baskingridge. A few months' study satisfied him that he ought not to enter the ministry, and he determined to study the law. To do this he

was obliged to relinquish any pecuniary support from his father, and to rely upon his own exertions. His mother presented him with all her little hoard of ready money, consisting of a few pieces of gold, as she saw him, with many tears, her handsome son and the pride of her heart, depart to carve out unaided his own career in the world.

Now in his twenty-first year, he resorted for a support and to procure resources for his future studies as a lawyer, to the business of teaching. He first became a tutor in the Taliaferro family of Virginia, in which Mr. Southard afterwards filled the same place; subsequently at Esopus, Ulster County, New York; and then obtained the position of classical instructor at Rutger's (then Queen's) College grammar school. While thus engaged in teaching, he pursued with diligence in his leisure hours the study of the law. Soon he entered the office of William Paterson, then an eminent counselor, afterwards governor, as a regular student, and was licensed as an attorney in 1785, when he had attained the age of twenty-nine. He then took up his residence in Morristown, and succeeded in obtaining a respectable practice. Having the misfortune to lose his small library by fire in 1787, he returned to New Brunswick, where he continued to reside during the remainder of his life. His practice was soon considerable,—a result which has been always attributed to his untiring industry and to his attention to his favorite maxim, that “Whatever is worth doing at all, is worth doing well.” That he was naturally energetic, and that he was capable of great exertion, I do not doubt; his acquirements as a profound lawyer attest that, and that the natural powers of his mind were of the

highest order; but when I knew him he was not an industrious student, and did not claim to be.

In the year 1792 he married Miss Jane Bayard, the beautiful daughter of Colonel John Bayard, of revolutionary memory, a distinguished citizen of Pennsylvania, who removed a few years before to New Brunswick. Andrew Kirkpatrick and Jane Bayard were at the time of their marriage called the handsomest couple in New Brunswick, which I can readily believe from my recollection of them, after they had long passed the middle age of life.

In 1797 he was elected one of the members of Assembly from the County of Middlesex; and at the adjourned session in November of that year was appointed by the joint meeting one of the justices of the supreme court, to fill the vacancy occasioned by the resignation of Mr. Justice Chetwood. Upon the death of Chief Justice Kinsey, in 1803, he was elected by a democratic joint meeting chief justice, and having been twice afterwards reëlected, he sat as a judge of the supreme court twenty-seven years, a longer term than any other judge except Isaac Smith. He was at the bar about twelve years, but spent most of his professional life on the bench. In 1820 he was elected a member of the legislative council, the constitution then in force admitting such a union of offices. He did not take a very active part in legislation. But little indeed was done. The legislature met October 24, and adjourned November 21, *sine die*. All the laws enacted for that year, public and private, are contained in thirty printed pages, a striking contrast to the fourteen hundred pages of modern yearly statutes, most of which are worse than useless.

When I first became acquainted with him, he had attained the full maturity of his powers, and was certainly the most imposing judge I have ever seen. He was a very handsome man, with a white head of hair, still wearing a cue, but not requiring the powder with which, in accordance with the fashion, he had been accustomed to whiten it at an earlier day. He had a very fair complexion, and a remarkably fine voice. He spoke and wrote correct and idiomatic English; was a learned, and in the law of real estate, a profoundly learned lawyer; a complete master of the abstruse learning of Coke, and the black letter reporters, but not well versed in modern innovations, which he regarded as blemishes and not as improvements, and did not care to study. His opinions, as published in Pennington and Halsted's Reports, upon questions relating to the law of real estate, deserve the most careful study of every lawyer aspiring to understand this most difficult branch of the law. They will be found to exhibit a fullness and accuracy of knowledge, a clearness of comprehension, and a justness of reasoning, which secured him the confidence of the profession, and entitle him to rank among the most eminent of American jurists. His opinion in the case of *Johnson vs. Morris* (2 Halsted R. 6) may be referred to as showing his complete mastery of the questions discussed, and a good specimen of his easy and perspicuous style. It may be said, too, that his decisions, although of course often questioned, were generally correct, and have been commonly sustained. The most important case decided by him was *Arnold vs. Mundy* (1 Halsted R. 1), and his charge to the jury, and mature opinion delivered from the bench, are fine

specimens of his judicial style, although it is to be regretted, I think, that he adhered closely to the common law of England, and did not sufficiently consider the altered circumstances and habits of a newly settled country.

If I make a truthful statement of the characteristics of Chief Justice Kirkpatrick, I must acknowledge, although he had some very high qualifications for his office, he had also some very grave defects. As before suggested, he did not keep pace with the changes of the law, in his time very great, especially in cases involving the law of personal property and negotiable instruments. He was the reputed author, and if not the author, he certainly approved and enforced the act of Assembly passed in 1779, and reënacted in 1801, which forbade the reading in our courts of any adjudication, decision, digest, or book, made in Great Britain after the year 1776. It was repealed in 1818; but even after that, he frequently exhibited impatience when a modern English treatise was cited; and I have heard him say that if a man had a cause of sufficient importance and desired to gain it, all he need do was to send to England and have a treatise written, taking his desired view of the law applicable to the case, and the American courts would be pretty sure to follow it.

The members of the bar, and especially the younger ones, complained that he often failed to listen patiently to their arguments, and sometimes checked them with "caustic severity." I remember that when about to commence an argument before the court myself, one of them (William Chetwood, of Elizabethtown, I think it was) whispered to me, "If the old chief snubs you, point your finger over your shoulder,

and see if he won't take the hint." The significance of this remark will be understood when I state that I happened at the time (1823) to be speaker of the House of Assembly, which then was in session in the room back of me, and that his term of office was about to expire. In point of fact, the next year, so strong was the opposition to his reappointment, that another was selected in his place. I had no part in this movement, and regretted it, although his successor was a man eminently fitted for the position. I had no occasion to complain of my treatment at the time referred to, nor do I recollect but one occasion when he gave me any ground of complaint, and then I probably deserved the rebuke, if so it might be called. Once when he thought I had said all the case required, or was weary, he took out his watch, and looking at it very earnestly, turned the face towards me so significantly that I soon took the hint.

Apropos of long arguments, a circumstance occurred about this time which occasioned no little merriment. Charles Kinsey, a son of Chief Justice Kinsey, then a good lawyer, in full practice, but apt to be rather prosy, was associated with Colonel Warren Scott. The latter having made his argument left the court while Mr. Kinsey was speaking. It happened, that at the next term, when he entered the court-room, Mr. Kinsey was again on his feet. Scott going near, lifted up his hands in mock astonishment, and exclaimed, in a whisper, loud enough to be heard and enjoyed by court and bar, "What, Charley, at it yet?"

When the legislature met in 1824, it soon appeared that the chief could not be reëlected. It was currently said that one rising member of the bar

was elected a member of the Assembly with the avowed object of preventing it. Party politics had very much subsided, and had it been otherwise, he had no hold on either of the old parties, and although he received a respectable vote in the joint meeting, he had no personal friends there. He spent the remainder of his days in the bosom of his family at New Brunswick, without employment, except it might be to give an occasional opinion as counsel, when specially consulted. From 1809 until his death he was one of the trustees of Princeton College, and seldom failed to attend the meetings of the board. He died in 1831.

During the twenty-one years that Kirkpatrick was chief justice, there were two associate justices, and these at different periods were, William S. Pennington, William Rossell, Mahlon Dickerson, Samuel L. Southard, and Gabriel H. Ford, all of whom became governors of the State, except Rossell and Ford, and have been remembered in that connection. Some of these were men of considerable intelligence and learning; but it may be safely asserted that the chief justice was head and shoulders above them all except Southard.

WILLIAM ROSELL was an honest, industrious judge, of excellent character and good judgment, who was elected by the Republicans, as he once said to me himself, because they had no good lawyer of the party in the western part of the State, willing and fit to take the office, and because, being an active and influential politician in Burlington County, where he resided, he had been for that reason persecuted by some of the Federalists. For many years after he

became judge he was one of the most influential leaders of the democratic party in the State; although I do not remember that he was accused of allowing politics to influence him on the bench. His good sense led him generally to concur with the chief justice, and some of his reported opinions read very well. But his total lack of legal knowledge, especially in matters of practice and pleading, was so much complained of by the lawyers of the circuit which he attended, that in 1820 an act was passed, requiring the justices of the supreme court so to arrange the several circuits in the State, there being no judicial districts established by law, as now, that no justice should hold the circuit court in the same county two terms in succession, unless in the opinion of the court there should be a necessity therefor.

This hard law continued in force and was complied with, to the great inconvenience of the judges, until 1846. When this law was passed there were two circuit courts held each year in all the counties (thirteen in number) except Cape May, in which there was only one. The other courts had four terms in each year until 1855, when they were reduced to three, and the circuit courts in all the counties were required to have three terms yearly.

I must confess that although I had been active in procuring this law, I could not help feeling regret when a judge from the northern part of the State was obliged to attend one of the southern circuits and spend two days on the road going and the same returning, with a very inadequate compensation. It should be mentioned that in those days the judge seldom or never took up his quarters at a hotel, but was gladly entertained by some member of the bar

Upon the death of Judge Pennington in 1826, Rossell was strongly recommended for, and received the appointment of judge of the district court of the United States for New Jersey, a place at that time of great respectability and very little labor, like the common bench in England at the same period, to which judges were glad to retire from more arduous duties. When he retired from the bench of the supreme court, a meeting of the bar, under the lead of Mr. Frelinghuysen, adopted resolutions highly complimentary of his faithful performance of the duties of his office. He died in 1840, at an advanced age.

Upon the resignation of Mr. Southard, in consequence of his election to the senate of the United States in 1820, Gabriel H. Ford was chosen by the joint meeting to succeed him, receiving one vote more than Joseph McIlvaine, the contest being, not political, but between East and West Jersey.

GABRIEL H. FORD was the son of Colonel Jacob Ford, and inherited from his father the house which became the head-quarters of General Washington in the winter of 1779-80, and is still possessed by his son. He graduated at Princeton College in 1784, studied law with Abraham Ogden of Newark, and was a member of the "Institutio Legalis," a sort of moot court of which William Griffith, Richard Stockton, Alexander C. McWhoster, and Josiah Ogden Hoffman of New York, students at the same time, all afterwards distinguished lawyers, were fellow-members, and which was kept up with great spirit many years. He was admitted as an attorney in 1789, and as a counselor 1793. Mr. Ford was a man of very considerable talents and learning, and an eloquent and successful advocate;

but never took a high rank as a counselor at the bar of the supreme court, where he seldom appeared. In the year 1818 an act was passed, establishing three judicial districts and authorizing the appointment of "some fit person skilled in the laws" judge for each of them, to be president of the several county courts, and to hold his office for five years. This was designed to remedy the evils so justly complained of by the bar and all intelligent citizens, of having such important courts held by a fluctuating number of judges, without any pretense of legal learning, and often without any experience. Judges were accordingly appointed, but only Mr. Ford, whose district consisted of the counties of Bergen, Essex, Morris, and Sussex, as then constituted, accepted and held the courts. Being in this situation, and it being pretty certain that the law under which he was appointed would be soon repealed, as it was, he had a fair claim to the vacant place on the bench of the supreme court, independent of his acknowledged merits. He was twice reëlected, and held this latter office twenty-one years, when, having become infirm in health and somewhat deaf, he acquiesced in the necessity of relinquishing the place to his successor.

During the most active years of my professional life, Gabriel H. Ford was one of the judges who came, at least once in every other year, to the circuit courts I attended, which were held then twice, and in Cape May only once a year. He was a courteous gentleman, before whom it was a pleasure to appear, although we did not think his decisions on points of law very reliable. He shone most in charging a jury, displaying a power of persuasion that was generally irresistible. He was apt to be severe on criminals, and

sometimes while I was the public prosecutor, urged the conviction of a defendant, I thought, very unreasonably. His judicial integrity was never questioned. His opinions, as reported, seem to me, as a general rule, wanting in logical force, and are in some cases curious specimens of judicial reasoning.

A novel and somewhat amusing scene occurred at a court of oyer and terminer held in the County of Cumberland, in the year 1830, at which Judge Ford presided. A man named Dilkes had not long before made his appearance, who professed to be a prophet, and gathered round him quite a circle of deluded followers. He received as divine the Old Testament, rejecting the New, and claimed to follow as far as possible the Jewish law, observing the Sabbath so strictly that no fire was to be used on that day. He took up his residence at the house of a maiden lady of some property, who lived with him as his wife, upon his assumption that he was entirely above all human laws. As a means of putting an end to this scandal, some of the neighbors complained to the grand jury, and procured indictments against them both for fornication.

When the trial came on, he made his appearance in court, accompanied by the woman, clad in a long white robe, and with a Bible in his hand, and attempted to repeat a sort of unearthly screech, with which he had been accustomed to terrify his followers. But he was so cowed by the stern dignity of the judge, and all the circumstances surrounding him, as utterly to fail, and sat down very evidently crestfallen.

When, as prosecutor of the pleas, I was about to open the case, I heard the woman urging him to marry her in due legal form, and I told him if he chose to do so, I would discontinue the proceedings. He

declared himself willing, and I mentioned the proposal to the court. To my great surprise the judge told them to stand up, asked them if they desired to be married, and upon their answering in the affirmative, immediately proceeded with a formal marriage ceremony in open court, and pronounced them man and wife. I thereupon, with the sanction of the court, entered *nolle prosequis* on the indictments, and the new made man and wife were discharged. The effect of this proceeding was to destroy the influence of the pretended prophet over his followers, and to compel him very soon to relinquish his pretensions and to leave the place. The judge justified the marriage upon the ground assumed in his opinion as delivered in the case of Pearson *vs.* Howey, 6 Hal. R. 17, that nothing more is required in New Jersey to constitute a valid marriage than a mutual contract solemnized in the presence of witnesses, and besides, he thought himself entitled to assume the functions of a justice of the peace, by virtue of his office.

When he retired from the bench, a meeting of the bar adopted resolutions highly commendatory, in which they say very justly: "The memories of those associated with him upon the bench and at the bar will bear lasting witness of his untiring patience in investigation, his purity, and, his independence, which led him at all times to adopt as a maxim, 'Be just and fear not; ' so too we remember and gratefully acknowledge the constant, unvarying, and distinguished courtesy, which throughout the many years of his judicial labors marked his intercourse with the bench and bar." He did not resume his practice as a lawyer, but died in 1849, at the age of seventy-one.

GEORGE K. DRAKE was the son of Colonel Jacob Drake, his mother being a sister of the father of Mahlon Dickerson. He was born in Morris County, in the year 1788, and after having had the instruction during several years of the Rev. Dr. Amzi Armstrong at Mendham, he entered Princeton College, and graduated in 1808, in a class of which Bishop Meade of Virginia, Judge Wayne of the supreme court of the United States, and George Wood, were members. He studied law with Sylvester Russell at Morristown, was admitted as an attorney in 1812, as a counselor in 1815, and as a sergeant at law in 1834.

After his admission to the bar, he opened an office at Morristown, and continued to practice law there, until he was made a judge. In 1823 he was elected a member of the house of Assembly, and I had then the privilege of becoming well acquainted with him; nor did I esteem him the less because he voted for my opponent as speaker, he being a fellow-member from his own county. The contest, indeed, was a friendly one, each candidate voting for the other, as was then the usual custom. He was reëlected for the succeeding three years, and the two last years of his service was the Speaker. At a joint meeting held in December, 1826, he was chosen justice of the supreme court, *vice* Justice Rossell. It often occurred that members of the legislature were chosen judges, as was natural, and, indeed, generally commendable, because, in such cases, the members had thus some knowledge of the fitness of the person voted for.

Not long after his appointment, Judge Drake removed his residence to Burlington, to meet the wishes of the bar in West Jersey, no other judge having his residence in that part of the State. In a few years he removed to Trenton.

Judge Drake was not a man of brilliant talents; but what was more important, he was of excellent disposition and character, whose integrity and fairness were never impeached. His opinion in the case of Hendrickson *vs.* Decow (Saxt. R. 577), which prevented his reappointment, is a fair test of his ability. It is well expressed and fairly reasoned, and is in all respects correct. He was a member of the Presbyterian Church and a sincere Christian, and was led by his zeal for the truth to put his decision on principles which, inasmuch as the case did not necessarily require them to be assumed, it might have been wiser to avoid.

At the fall election in 1833, the losing party, most of whom had previously been opposed to Jackson, cast their votes very generally with the Democrats, and this, with other causes, gave to that party a large majority, in both branches of the legislature. It soon appeared that their great object was to strike at Drake; and the result was that his reëlection was defeated, although he had the support of several Democrats, and among others, of the man selected to supplant him, who very reluctantly accepted the office when he became satisfied that at all events there must be a change. Improper as such a short term of office as seven years is, this is, I believe, the only case where the reappointment of a generally acceptable judge has been defeated by a single obnoxious decision.

Upon the termination of his office, Judge Drake returned to Morristown, and resumed his practice as a lawyer. He lived, however, but a short time, having been seized with an attack of pleurisy while on a visit to his brother-in-law, Dr. Woodruff, at Drakesville, in 1837, which terminated his life before he had reached the age of fifty.

THOMAS C. RYERSON, a justice of the supreme court four years and a half, was the third son of Martin Ryerson and Rhoda Hull, and born May the 4th, 1788, at Myrtle Grove, Sussex County, N. J., five miles west of Newton, the county seat. He was a great-great-grandson of Martin Ryerson of French Huguenot descent, who emigrated from Holland about 1660, and settled at Flatbush, on Long Island, and who was a member, from an early age, of the Dutch Reformed Church, as its records still show, and for those days possessed of considerable property. On the 14th of May, 1663, he married Annettie Rapelye, a daughter of Jaris Jansen Rapelye, who settled on Long Island in 1625, which year his first daughter, Sara, was born, the first white child born on Long Island. From this marriage have sprung large numbers of the name of Ryerson (besides numerous descendants of the female branches of the family), who are scattered over New York, New Jersey, and several other States, and many in Canada; and in all of them the original Christian name of "Martin" has been kept up, that being the name of both the father and grandfather of Judge Ryerson. His grandfather resided in Hunterdon County, N. J., whence his father removed to Sussex about 1770, dying there in 1820, in his seventy-third year; his father and grandfather were both distinguished as skillful surveyors, being deputies of the surveyor-general of both East and West Jersey; and his father was thus enabled to make very judicious land locations for himself, and at his death left a landed estate of between forty and fifty thousand dollars.

Until the age of sixteen Judge Ryerson remained at home, working on his father's farm, and receiving

only the common education of the country. In 1800 his father removed to Hamburg, in the same county, where he died, and in 1804 his son began preparing for college at a private school in the family of Robert Ogden. He was an older brother of Colonel Aaron Ogden, a graduate of Princeton College in 1765, and one of the founders of the Cliosophic Society. He was born at Elizabethtown, practiced law there for several years, was in the American army during the War of the Revolution, and, on account of the effect of the sea air upon his health, removed, about 1785, to Sparta, Sussex County, five miles from Hamburg, where he owned considerable real estate, and died in that county in 1826, aged eighty years. His fifth daughter, Amelia, married Judge Ryerson in November, 1814; an older daughter, Mary, was married some fifteen years earlier to Elias Haines of Elizabethtown, the father of the Hon. Daniel Haines, late governor, and judge of the supreme court. After some time spent in this private school, he finished his preparatory studies at the Mendham (N. J.) Academy, then taught by the late Hon. Samuel L. Southard, and in 1807 entered the junior class at Princeton, graduating there in 1809, with the third honor in a class of forty-four. His school acquaintance with Mr. Southard ripened into an intimate and life-long friendship, and a very warm and enduring friendship grew up between him and the late Judge George K. Drake, who graduated at Princeton in 1808. After graduating he studied law with the late Job S. Halsted of Newton, and was admitted to the bar in February, 1814; four years of study with a practicing lawyer were then required, even of graduates, and during a part of this time he was out with the New

Jersey militia at Sandy Hook, to resist a threatened attack of the British.

Immediately after being licensed he began practicing law at Hamburg, marrying in the following November, as above stated, and continued practicing there till April, 1820, when he removed to Newton, where he resided till his death, August 11, 1838, aged a little over fifty years. For two years, 1825-27, he was a member of the legislative council of this State, and in January, 1834, was elected by the joint meeting a justice of the supreme court, in place of Judge Drake, whose term then expired. The Hick-sites, mainly, as was believed, to defeat the reëlection of Drake, aided in 1833 in electing a large majority of Democrats to the legislature, which the year before had a majority of the other party. Although a leading and influential Democrat, and politically opposed to Judge Drake, Judge Ryerson, in common with many other Democrats, was strongly opposed to this unjustifiable proscription, and a warm advocate of Judge Drake's reappointment, and used all his influence with the four democratic members from Sussex in his favor. He was not in Trenton during that session till after the joint meeting, and his name was brought forward in the democratic caucus as an opposing candidate, without his consent or knowledge. The leading opponents of Judge Drake finding that the votes of the Sussex members would reëlect him, resorted to the use of Judge Ryerson's name as the only means of preventing it, and thus, without his knowledge, he was made the instrument of defeating an excellent and irreproachable judge, his own warm personal friend. So strong an impression had he made upon the Sussex members in

favor of Judge Drake, that one of them voted for him in joint meeting, notwithstanding his own democratic caucus nomination, and other Democrats also bolted the nomination; so that, notwithstanding the large democratic majority in joint meeting, he was elected by only a very small majority. So strong, however, was the Hicksite feeling against Judge Drake that he received but one vote from the members south of the Assanpink.

Theodore Frelinghuysen was then in the senate, his term to expire March 4, 1835. He also had given great offense to the Hicksites by his able and eloquent speech in the same suit, and to reach him the same combination was continued till the election of October, 1834, and resulted in sending General Wall to the senate in his place.

The news of his election was a complete surprise to Judge Ryerson, and with it came letters from prominent Democrats, urging him to accept, and assuring him that his declination would not benefit Judge Drake; that party lines had become drawn, and he could not now under any circumstances be reelected. He held the matter under advisement until the receipt of a letter from Judge Drake himself, dated February 3, 1834, urging him to accept, "*and that promptly.*" He said also, "I feel under obligations to you and my other friends for your zeal in my behalf, but it has proved ineffectual, and I have no confidence in the success of another effort." And again, "If the place is thrown open, nobody knows into whose hands it may go. I rejoice that it has been so disposed of that we may still confide in the independence and integrity of the bench." This letter decided him to accept, and he was sworn into

office February 25, 1834, holding it till his death in August, 1838.

Judge Ryerson's course at the bar, and on the bench, fully justified the opinion of Judge Drake quoted above, as in all positions he was a man of the firmest independence and strictest integrity. He was an able lawyer, well read, and remarkable for a discriminating and sound judgment, an earnest and successful advocate, with great influence over courts and juries in Sussex and Warren, to which counties he confined his practice, and as a judge it is believed that he enjoyed in a high degree the esteem and confidence of the bench and bar, as well as of the people at large. For the last eight years of his life he was a very devoted member of the Presbyterian Church, his wife having joined it some eight years earlier, and dying three years before him. Her father was for many years an exemplary and very influential elder of the same denomination, and a large number of his descendants have been, and are professing Christians.

Judge Ryerson was very easy and affable in his manners, delighting in social intercourse and conversation, with a great fund of anecdote, very simple and economical in his personal tastes and habits, spending, however, freely in educating his children, and noted for his liberality to the poor around him, and to the benevolent operations of his day. So much did he give away, that he left no more estate than he inherited, although in full practice for twenty years before his appointment as judge. He often said to his children that he desired only to leave them a good education and correct principles, and that they must expect to make their way in life with these only

to depend upon. Both as lawyer and judge he was very painstaking and laborious, conscientiously faithful in the discharge of duty to his clients and the public; having a strongly nervous temperament, the mental strain was too great, and resulted at length in a softening of the brain, from which he died after an illness of three months, leaving three sons and a daughter, and a widow, his first wife's younger sister, and since deceased, to mourn an irreparable loss. Three of his children remain, the youngest son, Colonel Henry Ogden Ryerson, having been killed in May, 1864, at the head of his regiment, on the second day's bloody fighting in the battles of the Wilderness in Virginia.

Martin Ryerson, the eldest son of Judge Thomas C., graduated at Princeton in 1833, at the age of eighteen, in a class of forty-three, delivering the Latin salutatory, and was a justice of the supreme court from March, 1855, until September, 1858, when ill health compelled him to resign. He still lives, however, taking an active and influential part in the business of the Presbyterian Church, in which he is a ruling elder. I am indebted to him for this interesting, and, I think, truthful account of his father. I had no knowledge of that gentleman, except as a member of the legislature, until he became a judge; and then, although apparently slow in comprehending a case tried before him, he showed a good knowledge of the law, and a very sound judgment.

I have always understood that he was originally a Federalist, but belonged to that class who followed the "New York Evening Post," the political newspaper organ of Hamilton, in preferring Jackson to Adams, and thus became a Democrat. It was one of the

marked features of the change in the politics of this State that many of the leading men both of the federal and democratic party in Sussex (originally including Warren), which, up to 1820 was the leading federal county of the State, went for Jackson, and thus Sussex and Warren came to give very large democratic majorities. At the breaking out of the rebellion Martin Ryerson, who had previously been a very decided and active Democrat, took a decided stand against the South, and is ranked now among the Republicans.

CHAPTER XII.

JUDGES I HAVE KNOWN.

CHARLES EWING. JOHN MOORE WHITE. DANIEL ELMER. JAMES S. NEVIUS. IRA C. WHITEHEAD. ELIAS B. D. OGDEN. STACY G. POTTS.

CHARLES EWING succeeded Kirkpatrick as chief justice in 1824, elected to this place by the joint meeting very much against his wishes; not because he was unwilling to take the office, but because he was averse to the displacement of his predecessor, who he thought ought to have been reelected. It was a happy choice, and reconciled all to the change.

His parentage was from the Scotch Irish race, in my opinion equal if not superior to any in the country, James Ewing, his father, was the grandson of Finley Ewing, of Londonderry, Ireland, who for his distinguished bravery at the battle of Boyne-water was presented with a sword by King William. His father, Thomas Ewing, emigrated to Cumberland County, in this State, in the year 1718, and became the founder of a large family, who and their numerous descendants were, and continue to be, distinguished for great excellence of character. Thomas Ewing, of Ohio, a senator from that State, and secretary of the treasury under Harrison, who has recently died, was a grandson.

The mother of Charles Ewing was Martha Boyd, whose father was also from the north of Ireland, and came to Bridgeton about the year 1772, leaving his wife and three children in their native home. He

succeeded in establishing a good business in a retail store and sent for his family. When they arrived in the winter of 1773, they found the husband and father had recently died. The widow, one of those excellent women whose memory deserves to be perpetuated, continued her husband's business, and employed as her assistant James Ewing, then nearly thirty years of age. He married the widow's eldest daughter, and after being a member of the legislature, moved to Trenton, about the year 1799, where he lived highly respected, and holding important offices until his death in 1824. Their only son, the future chief justice, was born in 1780, his mother dying while he was still an infant.

After having graduated at Princeton, and received the first honor, being especially distinguished for his proficiency in mathematics, he studied law with Samuel Leake. His preceptor is more remembered for his peculiarities as unusually precise and methodical in all his business; but he had besides a high reputation for accurate legal knowledge, and was undoubtedly a man of the most sterling integrity. Any attempt to depreciate him in the hearing of Mr. Ewing, was sure to meet a stern rebuke. To the end of his life, he always spoke of him in the highest terms of affection and respect; he was too good a judge, and had too many opportunities of knowing well the entire character of Mr. Leake, to leave it doubtful that he was a lawyer of uncommon excellence.

Of Mr Ewing's character as an advocate, I had but very little opportunity of judging; I only knew that he stood very high in the estimation of his fellow-practitioners, and of the community generally. As a judge, he fulfilled the highest expectations of all. His predecessor had been complained of as unwilling

to pay sufficient attention to the statutes regulating the proceedings in justices' courts, and was thought to be somewhat capricious in dealing with questions that arose upon *certiorari*. Some of the lawyers used to talk of waiting to move such cases until he was seen to be in the humor of reversing. Much of this complaint was unfounded, as I think will be readily seen by examining his opinions, which were generally sound. But however that may be, all such complaints ceased when the court was led by Chief Justice Ewing. Every one knew that he would give the most careful attention to every question, no matter how apparently trivial it might be.

His integrity was never impeached, and he took care to maintain his high character for impartiality and strict adherence to the law, by the most scrupulous avoidance of everything that might seem to excite a doubt. The salaries of the judges were small, and it had been the habit of those holding the courts in South Jersey, and I suppose in other parts of the State, to take their lodgings with friendly members of the bar, who were glad to be able to entertain them. This, of course, exposed the judges to complaints of partiality in regard to postponements, and other questions of importance not involving the merits of the cause. Chief Justice Ewing entirely changed this practice. He absolutely refused also to take any compensation for striking a jury, or for any other service not specially provided for in the fee bill. The consequence was that no judge ever more thoroughly deserved and acquired the confidence and respect of jurors, suitors, and advocates.

Mr. Southard's eulogium, delivered shortly after his decease, by request of the common council of Tren-

ton, attended, pursuant to their resolution, by the judges and the bar of the supreme court, delineates his character with great faithfulness and ability. Adopting the language of this beautiful effusion of loving esteem it may be truly said :—

“ As a judge, he was learned both in principles and cases, and prompt in their application ; a strict common law lawyer. Under his professional instructor, who loved the learning of the black letter, he had been led to the original sources of legal principles, and he also delighted to find in the old authorities, both the establishment and the reason of the doctrine on which he was to decide. But he did not rely on them alone. He read diligently, and derived the aid which they afford, from the volumes of civil and ecclesiastical law, and examined carefully, and improved by all the valuable legal publications of the present age. He was not, however, hasty in adopting new systems or notions, nor liable to be incautiously misled by them. To conquer his approbation, it was necessary that they should encounter him armed with the weapons of reason, argument, and expediency. He was not fond of innovations in the law ; the inclination of his mind always was *stare super vias antiquas*.

“ He always took upon himself all the responsibilities of the judge, and discharged his obligations to juries fully, by guiding them in matters of law, and, where it was proper, aiding them in their estimate of facts and evidence. He held it a duty of the court to instruct them, both in civil and criminal cases, and would not permit them, in the exercise of their right to judge of the law in criminal matters, to disregard its provisions ; but promptly and efficiently interfered to arrest their errors. And this out of no disregard of their rights. For the system of jury trial he had a fond admiration, and watched over it with paternal care. He saw it as an establishment of freedom ; the privilege and shield of freemen ; valuable for the support and perpetuation of our institutions ; not only by guarding against oppression in every form, but by frequently calling on the citizen to partake in the administration of justice, thereby interesting his feelings in its support, and instructing him in his own rights and duties.

“ To his labor as a judge there was but one limit, the perfect examination of every question he had to decide. Short of this point he never rested. He was not satisfied while one fact or authority remained unexamined, or one avenue to light unexplored.

For personal comfort and private pecuniary interest he had a fitting regard; amusements of a becoming and moral character he did not spurn; social pleasures he enjoyed; literary and scientific acquisitions were his delight; on domestic enjoyments his heart rested with fondness; yet none of these were ever found in the way of his complete investigation, and his entire performance of every official duty."

There is an instructive passage in the work on the modern Roman law of Savigny, a great German professor, to this effect: "When a case is submitted for the decision of one unskilled in law, he will generally decide it according to a confused impression of the whole; and nevertheless, if of sound sense and decided character, will believe himself very sure of his point. It will, however, be very much a matter of chance, whether a second of like qualities will give the same or the opposite decision." The truthfulness of this remark we have had full opportunity of observing in New Jersey, where our highest court has always had an infusion of unlearned judges; but Chief Justice Ewing was the farthest removed from such a character. He was both learned and wise. He was always much opposed to judicial legislation; and if he erred at all, it was pretty sure to be in too scrupulous adherence to precedents. I think he did err in this direction; when he held that a will of real estate could only be established by proof that the witnesses actually saw the testator write his name; and in holding that a slight misrecital of the judgment or execution in the sheriff's deed would invalidate the conveyance; and perhaps in a few other cases. But these were mistakes on the safe side, and were easily and appropriately remedied by the legislature. I remember that considerable surprise was expressed by some of the members of the bar when the opinions

were read in the case of *Ellet & Boyce vs. Pullen*, 7 Halsted, 357, when it appeared that the chief justice was in favor of overruling an ancient rule of the common law, while Judges Ford and Drake, who were generally considered much more likely to do so, were for adhering to it strictly.

About the time he became a judge, to escape, as he said, the annoyance of interruptions in the evenings, he adopted the plan of very early rising, and his constitution requiring a full amount of sleep, he was accustomed, if practicable, to retire at a correspondingly early hour. This proceeding did not prove so useful to him as he expected; indeed, it may be doubted whether, involving such a great change of previous habits as it did, it was not productive of more evil than good. I have known him to be so overcome with sleepiness early in the evening, as fairly to nod when surrounded by company. He might very probably have done, as we are told Josiah Quincy and John Quincy Adams, who carried to excess early rising, did when they attended a lecture of Judge Story. Seated on the platform in full view of the class, they fell asleep. The lecturer perceiving this paused a moment, and then pointing to the two sleeping presidents, said with mock solemnity: "Gentlemen, you see before you melancholy examples of the evil effect of early rising."

When the short term of seven years for which this highly acceptable judge had been appointed expired, he was reelected by a joint meeting opposed to him in politics. No one breathed a word of opposition. No other man could have filled the office so acceptably. But before the first year of his new term had expired, he died, carried off by that fell destroyer the cholera, which visited many parts of our country for the first time so severely in the year 1832.

A letter from Rev. Dr. James W. Alexander to Rev. Dr. Hall, published in that interesting and most instructive work, "Forty Years' Familiar Letters," written in 1859, thus happily characterizes Judge Ewing:

"It deserves to be noted, among the traits of a Presbyterianism which is passing away, that Judge Ewing, as a baptized member of the Church, always pleaded his rights, and once in a public meeting declared himself amenable to the discipline of church courts. There is good reason to believe that he was a subject of renewing grace long before his last illness. During this brief period of suffering, he made a touching avowal of his faith in Christ.

"Judge Ewing is justly reckoned among the greatest ornaments of the New Jersey bar. His acquaintance with his own department of knowledge was both extensive and profound, closely resembling that of the English black letter lawyers, who at this moment have as many imitators at the New Jersey bar as anywhere in America. He was eminently conservative in church and state, punctual in adherence to rule and precedent, incapable of being led into any vagaries; sound in judgment, tenacious of opinion, indefatigable in labor, and incorruptibly honest and honorable, so as to be proverbially cited all over the State. In a very remarkable degree he kept himself abreast of the general literature of the day, and was even lavish in regard to the purchase of books. He was a truly elegant gentleman of the old school; an instructive and agreeable companion, and a hospitable entertainer. He deserves to be mentioned in any record of the Church, for I am persuaded that there was no human being to whom its interests were more dear. As the warm and condescending friend of my boyhood in youth, he has a grateful tribute from my revering affection.

"When from any cause there was no one to preach in the church, the service was nevertheless carried on by the elders, according to the book, and a sermon was read. The reader on these occasions was always Mr. Ewing; and the discourse which he selected was always one of Witherspoon's; the choice in both cases being significant."

From more than one conversation with Chief Justice Ewing, I was convinced of his deeply religious feelings, although he was disposed to be reticent on such subjects. When he presided at the table, on his

circuits, he was accustomed to invite some one to ask a blessing, or more frequently to do so himself. Once when breakfasting at Woodbury, Mr. Ewing, Mr. Southard, then attorney-general, and myself having a table in a private apartment, a gentleman (if he deserves such a character) from Philadelphia, a stranger to us, was brought up by the landlord to partake with us. When Mr. Ewing very simply and reverently asked a blessing on our refreshment, the stranger was so taken by surprise that he made a very audible whistle. No immediate notice was taken of the impertinence, but Mr. Southard took an opportunity of rebuking the perpetrator pretty severely, and induced him to apologize for his rudeness. It appeared that he had no idea at the time of the character and standing of the two gentlemen into whose company he was unexpectedly brought.

The resolutions usually adopted at a meeting of the bench and bar, upon the retirement or death of a judge, are not always the most reliable evidence of his true character; but those recorded in the minutes of the court in the case of Charles Ewing are remarkably discriminating and just. They are, —

“ Associated with him for a long course of years, as a pleader, an advocate, and a judge, we are all able to bear witness to his industry, his wisdom, and his worth. His deep devotion to the truth; his untiring patience in its pursuit; his scrupulous fidelity in the performance of the various duties of his station; his sound, discriminating, vigorous, and capacious mind; his great and extensive learning in the science of jurisprudence; his unyielding, uncompromising, jealous integrity and purity of character; his modesty, courtesy, and dignity, present such an assemblage of the peculiar virtues and talents required in the due and faithful administration of justice, that we know not where to look upon his fellow.

To that wise and mysterious Providence which has removed him, in the midst of his usefulness and in the strength of his days, we bow with humble resignation and submission.”

Less than a month before his lamented decease, namely, at the July term of that year, when he was in full health, I witnessed a scene in the court of chancery which was a complete contrast to that which I have described as occurring in the supreme court fourteen years earlier. It was the delivery of the opinions in the case of *Hendrickson vs. Decow*, involving the contest between the rival parties in the Society of Friends. The chancellor having been counsel in the cause while at the bar, called to his assistance on the hearing Chief Justice Ewing and Mr. Justice Drake of the supreme court. A great mass of testimony had been taken, filling when printed two octavo volumes; and the argument lasted more than a week, George Wood and Isaac H. Williamson being the counsel of the party usually called Orthodox, and Garret D. Wall and Samuel L. Southard of the party called Hicksite.

The day for delivering the opinion was previously announced, and both parties attended the court in full force. Seldom has such a spectacle been witnessed. The court room was entirely changed, having been fitted up at the expense of the United states,—whose courts occupied it at times when the State courts were not sitting,—through the influence of Mr. Southard, while he was in the cabinet at Washington, and was arranged substantially as it now is. The two judges, both of very grave demeanor, occupied the bench. Facing them were arranged long rows of the leaders of the contesting parties; the Orthodox on their right and the Hicksites on their left hands. All wore their accustomed dress of drab and of antique shape, and retained on their heads their broad-brimmed beavers. Each party appeared to expect success, for no one knew what the decision would be. All maintained their

accustomed quietness of manner; but a looker-on of only moderate sagacity could easily perceive that they were awaiting the result with the deepest anxiety. The common and expressive phrase, "You could hear a pin drop," was never more applicable.

Chief Justice Ewing led the way, and occupied an hour and a half in reading his opinion; so fully considered and so carefully stated, so cautiously avoiding everything likely to shock the feelings of the unsuccessful party, and yet entirely decisive, that no offense could be taken, whatever might be the result. For an hour, while engaged in stating the facts of the case, the questions necessarily involved, and the arguments urged on both sides, it was not easy to determine how he would decide. But as he progressed and the final conclusion became more and more apparent, it was exceedingly interesting to notice, as my position enabled me to do, the change gradually working in the countenances of the interested listeners; on the one side suppressed disappointment and regret, and on the other, almost open triumph and exultation. He confined his opinion — reported in *Saxton's Reports*, p. 574 — to the consideration of the question whether the Arch Street Meeting representing the Orthodox, or the Green Street Meeting representing the Hicksite party, was the true Philadelphia yearly meeting of the Society of Friends, and thus entitled to the property in dispute; deciding in favor of the former, on the ground that the other had irregularly and illegally seceded, carefully avoiding the questions of doctrine so earnestly disputed. On the subject of the conflicting doctrines he remarked, "In the pleadings of this cause, in the extended volumes of testimony, and in the laborious arguments of the counsel, I do

not remember any charge that the members of the society who remain connected with the Arch Street Meeting have departed from the doctrines and principles of Friends as stated by their founder and his earlier followers; and I rejoice that I have not been constrained to inquire into the charge of departure, so freely and frequently urged against the members of the Green Street Meeting. In any remarks I have made, I am not to be understood as asserting or countenancing such a charge."

The feeling with which the opinion of Justice Drake was received was much more marked; but still there was no departure on either side from that absolute quietism to which they had schooled themselves. But unfortunately this opinion affected the sensibilities of the losing party far more strongly than that of the chief justice. He held that it was not made to appear that the doctrines of the party called Hicksite, whether right or wrong, corresponded with the religious faith of the Society of Friends; that there was an essential incompatibility in the admitted views of the opposing parties; and that it would be a breach of trust and a perversion of the fund contributed by Orthodox Friends, to permit it to go into the hands of men who, like Hicks their leader, might teach "that the Scriptures have been the cause of fourfold more harm than good to Christendom since the Apostles' days;" "or that each individual must interpret them for himself, entirely untrammeled by the opinions of man, and that the dictates of the light within are of paramount authority to Scripture, even when opposing its precepts."

The meeting broke up without the slightest breach of decorum; most of the individuals present exchang-

ing the customary shake, not only with those of their own party, but with those opposed to them. They departed, however, with mutual determination to maintain their respective positions. The Hicksites carried the case into the court of appeals, where the decree made in the court of chancery was affirmed.

JOHN MOORE WHITE, judge from 1838 to 1845, was born at Bridgeton, in the year 1770. His father was an English merchant settled in Philadelphia, who married the daughter of Alexander Moore, who was of Irish descent, and settled in Bridgeton about the year 1730, carried on a considerable business for many years, and accumulated a very handsome fortune. He owned nearly all the land upon the east side of the Cohansey River, upon which the town is built, and survived his daughter many years. Both father and mother were remarkably handsome persons; it having been said that when they entered the Arch Street Presbyterian Church after the marriage, they were about as handsome a couple as had ever been seen there. She died when their son John was an infant, leaving two other sons. The father returned to England; but when the War of the Revolution broke out, took the side of America, returned to this country, obtained a commission in the army, was aid to General Sullivan, and was killed at the attack on Chew's stone house at Germantown.

The grandfather then took charge of the three boys, and gave them an ordinary English education. When he died in 1786, he left them a large part of his real estate, including the Bridgeton property. John studied law with Joseph Bloomfield, and was admitted as an attorney in 1791, as a counselor in 1799, and as ser-

geant in 1812. Taking up his residence in Bridgeton, he married a Miss Zantzinger, built himself a good house, and entered upon the practice of his profession. In 1808, he removed to Woodbury, where he continued to reside during the remainder of his life.

His two brothers having died while young men and unmarried, he became entitled to all their property, and was a rich man. But he had no skill in making or keeping money, although without any dissipated habits, and not especially extravagant in his expenditure. During the latter years of his life, he was indeed a poor man. At one time he entered into speculations in connection with Joseph McIlvaine, and told me that the accounts between them were never settled, and he did not know which party owed ten thousand dollars or more to the other, and as neither of them could pay, it was not worth their while to ascertain how it was. He enjoyed remarkable health all his life, until some time after he was judge, when he became blind. He was active in his habits, and rather remarkable for driving and walking, even in cold weather, without an overcoat, or gloves.

Mr. White was a handsome man, and fully six feet in height. While he resided in Bridgeton, he was the brigade major of the Cumberland brigade of militia, of which James Giles was the general. The latter, although himself a handsome man, neat and trim in his appearance, was much smaller than his staff officer. When Mr. Adams was the president, and troubles arose with France, which occasioned addresses to be made from all quarters, the officers of the Cumberland militia united in an address tendering their services, which was presented by General Giles, attended by his brigade major. They wore their full uniforms, but

the president who knew nothing about military affairs, and did not pay attention to or did not understand the insignia of their rank, addressed Major White as the general, much to the mortification of the latter. I had the anecdote from Judge White himself.

Owning considerable tracts of unsettled land, White made himself thoroughly acquainted with the surveys located under the proprietors, and of the law applicable to them, and was justly considered an able advocate in the trial of cases involving questions of boundary, which during his early practice were very common in West Jersey. His business, especially after he removed to Woodbury, became quite large and lucrative. He was never ranked, however, among the able lawyers of the State. He prosecuted the pleas of the State for several years, in the counties of Cumberland and Salem, by virtue of a deputation from the attorney-general. It was customary for the attorney-general before the Revolution, and afterwards, to appoint deputies for those counties in which he did not personally attend the courts. The validity of such appointments having been in some cases disputed, the practice was in 1812 sanctioned by an act of the legislature; but in 1822 this act was repealed, and the appointment vested in the courts of quarter sessions. In 1823, however, the last mentioned act was in its turn repealed, and the joint meeting was required to appoint them; and this act continued in force until the Constitution of 1844 vested the appointment in the governor and senate.

He was a Federalist, and represented the County of Gloucester several times in the legislature. In the year 1833 he was appointed attorney-general of the State, holding the office the constitutional term of five

years. He prosecuted the pleas of the State in several of the counties very successfully, and was desirous of continuing in the office, rather than to assume the more important and difficult duties of a justice of the supreme court, for which he did not feel himself very competent, as I heard him repeatedly say. But it suited those who at the time controlled the joint meeting, to assign the office of attorney-general to another person; and Mr. White, in 1838, was elected a justice of the supreme court, the number of judges being now increased to five.

He had now attained the age of sixty-eight years, and although still enjoying good health, did not make a very satisfactory judge. He was not deficient in good, sound judgment, and generally decided the questions that came before him correctly; but in charging a jury, he was very deficient. His honesty of intention was never questioned. After the expiration of his office he lived very much in retirement during the remainder of his life, protracted to the year 1862, when he died at the age of ninety-one. He had one daughter, who died at the age of sixteen, and left no descendants.

DANIEL ELMER was a justice of the supreme court four years. He was born in the County of Cumberland, in the year 1784, was the fifth Daniel in regular lineal descent from the Rev. Daniel Elmer, who was settled as pastor of the old Cohansey Presbyterian Church in 1729, who died in 1755, and left several children, the descendants of whom, now a numerous body, still reside in South Jersey. He was a descendant of Edward Elmer, who came to this country from England in 1632, as a part of the congregation

of Rev. Thomas Hooker. He settled in Hartford, in Connecticut, and was killed by the Indians in 1676. The family name was originally Aylmer, of whom one was chief baron of the exchequer in 1535. John Aylmer was tutor of the celebrated Lady Jane Grey, and in 1568 was made Bishop of London by the name of John Elmer, as appears by the case of Elmer, Bishop of London, *vs.* Gale, in 5 Coke's Reports. A Lord Aylmer not long ago resided in Quebec. Daniel's father, while himself a young man, and with but little property, dying when he was only about eight years old, he was left to the care of my father, Dr. Ebenezer Elmer, his great uncle, with whom he lived for several years, and had only a common school education. From his earliest years he exhibited those traits of unceasing activity and energy which remained until he was disabled by disease.

About the year 1800, he was put to the study of the law, with General Giles, of Bridgeton, and served a regular clerkship with him, the five years then required of a student who was not a graduate of some college. His preceptor was the county clerk, and his pupil earned his board and most of his clothing by writing for him and others, and thus acquired an excellent style of penmanship, and great facility in transacting business.

He was licensed as an attorney in the fall of 1805, and at first had serious thoughts of commencing business in some other more promising locality; but this purpose he soon relinquished, and opened an office in Bridgeton. He was licensed as a counselor in 1808, and called to the degree of sergeant at law in 1828. In 1808 he married a daughter of Colonel Potter, and had several children, all of whom died in infancy or early

youth, except two, a son (Charles E. Elmer, Esq., of Bridgeton) and a daughter, who still survive. His residence continued to be in Bridgeton during his life.

The removal of John Moore White gave him the opportunity of acquiring an extensive and lucrative practice. I should mention, however, that in his day the lawyer in New Jersey who made three thousand dollars a year by his business, was considered as a very successful practitioner. Such was his indefatigable industry, and so sagacious was he in the acquisition and in the preservation of property, that he would not have failed of success anywhere, or in any business. His early education had been very meagre, and during his clerkship he had no time for systematic study. His knowledge of law, which became, however, quite extensive, and so far as it went very accurate, was mainly acquired, as has been the case with many other very successful lawyers, by a careful study of the cases he was called upon to undertake in his practice. A large part of his business was the collection of debts, and in these cases, as was formerly the usage, his emolument consisted almost entirely of the legal costs. Many lawyers pay but little attention to this source of income now; but I have known at least three others in this State who left large estates, mainly derived from a careful collection of costs safely invested. In 1810 I became a student in his office, and I remember that during my clerkship I had the pleasure (if so it might be called) of drawing two declarations, the legal fees for which averaged one hundred dollars each. They were counts on constable's bonds, where default had been made in collecting or paying over a great number of executions issued by justices of the peace. The possibility of such costs

was put an end to by an amendment of the fee bill, introduced by Mr. Griffith in 1824, by which the sum of one dollar and fifty cents, and seventy-five cents for the copy, were allowed for all declarations, and no more, instead of twenty cents for drawing and twelve for the copy, of every sheet of one hundred words, as was the provision of the previous fee bill.

During the war with Great Britain he was captain of a uniformed company of the militia, and afterwards rose through the various grades until he became general of the Cumberland brigade, by which title he was generally addressed. So different was the feeling in regard to the militia at that time from that which prevails now, that as soon as I was eighteen, my father insisted that I should pay no fines, but perform the regular duties of parade, and I became a subaltern in a uniformed company of artillery, and for several years was the brigade major and inspector. The day of the general training was, in those days, the principal holiday, when there was a great turnout of women and children to see the troops drilled and inspected by the general and his staff.

Captain Elmer was the means of frightening the good people of Bridgeton in the year 1814, under circumstances alarming enough at first, but in the end quite amusing. A British ship of the line visited Delaware Bay, and continued to blockade the river during all the summer, broke up the navigation as high as the Cohansey, and occasionally sent a party ashore to forage or procure water. For fear boats from the ship might come up the river and plunder the town, then having about eight hundred inhabitants, a guard was detailed every night, and posted at a station about two miles from the town by land, but five or six

by the water. All the boats and vessels passing the guard-house during the night, were hailed and required to give an account of themselves. If an enemy appeared, a messenger was to be sent to a prudent officer in the town, who was intrusted with the duty of giving the alarm, by firing a cannon and ringing the court-house bell.

About two o'clock of a midsummer's night, the gun was fired and the bell rung with great animation. The alarm and tumult that ensued may be imagined, but cannot easily be described. Great was the consternation, for no one doubted that the enemy was at hand. Women and children were crying, and some endeavored to hide their valuables; and the men ran to and fro. The militia, except some, who as usual were among the missing, were assembled, and an attempt made to array them for action. My cannon, which had been heretofore used only for salutes, was only an incumbrance, for we had no balls. Happily, however, it soon appeared, by a message from the captain, that the alarm was a false one, although it had not been sounded until all doubt of its necessity seemed to be removed. It originated from the timidity of a family near the guard-house, who heard the discharge of two or three guns which had been exposed to wet the night before, and were fired off that they might be reloaded; and from the foolhardiness of the skipper of a small sloop, who thought it good fun to pass the guard without answering their challenge, and who succeeded in bringing on himself and crew a volley of musketry, the captain in command not being a man it was safe to trifle with, and ran the risk of being killed by a ball which passed directly over his head.

After I commenced business as a lawyer myself, and for a quarter of a century, I was of course obliged very often to combat my old master; and many a hard fought battle we had. Both were apt to be impatient, and were resolute and persevering; and to make our encounters more apt to be disagreeable than they otherwise would have been, much of the litigation was before the court of common pleas, without the presence of a judge we could respect.

Upon the resignation of Judge Dayton, in 1841, Daniel Elmer was appointed by the joint meeting a justice of the supreme court. He had been a Federalist in early life and was now a Whig. He had, however, been too much engaged by his business to be much of a politician, and I think it cannot be doubted that most of the federal lawyers were benefited by being so many years in a hopeless minority, that they did not aspire to have any office, and were thereby required to be more diligent in the regular business of their profession. He hesitated at first about accepting the office, which he had not solicited, partly because the salary and perquisites, amounting to about eighteen hundred dollars, out of which all the travelling expenses had to be paid, were much less than he was earning; and partly for other reasons. But as by this time he was very easy in his circumstances, and was desirous of some repose, he accepted the appointment.

The most important case it fell to his lot to try, while he was on the bench, was the indictment against young Mercer for murder. He had shot a young man on board a steamboat, so that he died at Camden, who was believed to have seduced his sister in Philadelphia. This was among the first of the cases, now unfortunately so common, in which the sentiment of the com-

munity seems to have reached the conclusion, that as the crime cannot otherwise be adequately punished, the murder of the criminal, if perpetrated by a husband, father, or brother, must be tolerated. I was myself written to by a friend of the accused and asked if I would take a fee and aid in the defense. I answered that I would, but it must be understood that I would not go further than to present fairly to the court and jury whatever questions of law and fact should appear to me properly debatable. As I expected, I heard nothing more from my correspondent.

The trial took place at Woodbury, the county seat of Gloucester County, of which Camden was then a part. In one respect I thought the judge committed a great mistake. The court of oyer and terminer, in which he presided, consisted of several county judges, who partook of the public feeling strongly in favor of the accused. When a question of evidence arose, sometimes a question of great importance, he heard the argument and then consulted with the other judges, announcing the opinion of the majority, from which he was sometimes compelled openly to dissent. Had he followed the course I found it best to adopt myself, of giving, as soon as the argument was closed, my own opinion, and the reasons for it, and then desiring the other judges if they dissented to say so, he would, in most of the cases, have escaped the necessity of announcing a very erroneous decision. There is no reason, however, to suppose that the result would have been different. A clear case of technical murder was proved, and he charged the jury very explicitly, but the verdict was, Not guilty. It must be stated, however, that Mercer was himself ruined by the crime. He never got over the shock to his nervous system,

occasioned by the scenes through which he had passed, and after some years, when the yellow fever prevailed so fatally at Norfolk, in Virginia, volunteered as a nurse, took the fever himself, and died, it was said, a true penitent.

Judge Elmer was chosen a member of the convention convened to form a new constitution in 1844. For many years he was president of the Cumberland Bank. But even before he took a seat on the bench, he had begun to show symptoms of overwork. Indeed, I frequently remonstrated with him and warned him of the danger he was incurring. But men of his temper and disposition can never be convinced of this error; he was accustomed to say, that to him it was easier to work than to play. In the winter, after he had sat in the convention, he had a slight apoplectic attack, which so disabled him as to make it necessary for him to resign his office, and from which he never recovered. He died in 1848. Some years before his death he became a member of the Presbyterian Church. To say that he was a strictly honest and just man is hardly praise; for these are characteristics which have been always attributed to the family to which he belonged.

JAMES S. NEVIUS was a justice of the supreme court fourteen years. He was born in Somerset County in the year 1786, and graduated at Princeton College in 1816. Having studied law with Frederick Frelinghuysen, he was licensed as an attorney in November, 1819, admitted as a counselor in 1823, and called to be a sergeant at law in 1837. In 1838, upon the death of Judge Ryerson, he was chosen by the joint meeting a justice of the supreme court, and again appointed by the governor in 1845.

He took up his residence, and followed his profession as a lawyer in New Brunswick, where he continued to reside until after the expiration of his second term as a judge in 1852, when he removed to Jersey City, where he died in 1859. I had no personal acquaintance with him, and no knowledge of his professional habits while he was at the bar.

As a judge he undoubtedly showed very considerable talents, especially in presiding at the circuits and charging a jury. He was not, however, generally considered as having a very accurate knowledge of the law, nor are his opinions, although generally well and forcibly expressed, always safe to be followed. The characteristics which endeared him to his personal friends were not such as were specially fitted to make him a safe and able judge, but were rather those of the friend and companion. His impulses were generous, his sympathy was easily excited, and he was ready in showing favors to others, often to his own detriment. His unfailing humor and love of anecdote made him the life of the social circle, at home and abroad. Indeed, these characteristics became so prominent as greatly to interfere with his usefulness.

When I went on the bench in 1852, he had a few months of his term still to serve, and I found him a most agreeable associate. But at this time the appointments were in the gift of a democratic governor, and as the first governor under the constitution, who was a Whig, had unfortunately confined his judicial appointments to his own party, now, when they expired, the party in power insisted upon having at least a share of them. In the fluctuations of party which have since occurred, it has happened that the

two parties have been pretty equally represented on the bench, as ought to be the case whatever party predominates.

After his retirement from the bench, Judge Nevius resumed the practice of law; but I believe without very flattering success. To most men, especially to those whose habits of legal study are not confirmed, absence from the bar for so long a period as fourteen years, renders success as attorneys or advocates almost impossible. And it was not long before health began to fail.

He had been early trained in the catechism and indoctrinated in the system of evangelical truth by pious parents, and by his pastor, Rev. Mr. Cannon. He was always a respecter of religion, a careful and constant reader of the Bible, and is said to have been for many years before his death in the habit of family and secret prayer; and although he yielded to temptation, and indulged to excess in the love of fun, such a training and such habits, as might be expected, ultimately brought their appropriate reward. He frequently sought the society and the correspondence of Mr. Frelinghuysen, who in this, as in so many other cases, acted the part of a faithful Christian friend, and had the pleasure, at last, of seeing him become an avowed disciple of the Lord Jesus.

IRA C. WHITEHEAD was a justice of the supreme court one term of seven years. He was born near Morristown in 1798; had his preparatory education at the academy in that town, and graduated at Princeton College in 1816, in a class of which Bishop M'Ilvaine, Rev. Dr. John Maclean, and Judge Nevius were members.

He studied law at Newark with Hornblower; was licensed as an attorney in 1821, and as a counselor at law in 1824. He practiced his profession for a short time at Schooley's Mountain, but soon removed to Morristown, married a Miss Johnson, a most estimable lady, and continued to reside there until his death. He was for some time a partner of George K. Drake, who preceded him in the office of judge. During his professional life as a lawyer, I had no special knowledge of his business, and only know that he maintained a very respectable standing at the bar. In 1841, upon the expiration of Judge Ford's term, he was chosen by the joint meeting, then having a majority of Whigs, a justice of the supreme court.

As a judge he was highly respected, and fulfilled the important duties of that office with a single aim to do justice. His opinions, as reported in 3d and 4th Harrison, Spencer, and Zabriskie, show him to have been a painstaking, conscientious, reliable judge. His opinion and the decision of the court in *Den vs. Allaire*, Spencer, 6, was a good deal questioned, but it was certainly in the right direction; and now the fourth section of the supplement to the act concerning wills, approved March 12, 1851, so far as subsequent wills are concerned, has carried the principle still farther.

When his term expired in 1848, the politics of the State had become democratic, and all the judges—at that time five—were Whigs. Governor Haines yielded, I believe, reluctantly to the demand for the appointment of one belonging to the prevailing party. On his retirement from the bench, Judge Whitehead resumed his practice very successfully. After a few years, at the request of the bar, he accepted a seat on the bench of the court of common pleas, and presided

in that court one or two terms. His character as a man of the most unswerving integrity of purpose, caused him to be named executor of the wills of several persons leaving large estates, and among others of William Gibbons, who died at Madison, and was the principal legatee of his father, Thomas Gibbons, and defendant in the case of *Den vs. Gibbons*, 2 Zab. 117, where the extraordinary will of the father is given in full. The business thus intrusted to him, in itself important and lucrative, occupied his time and attention during the remainder of his life. Some five years before his death he suffered a slight attack of paralysis, and died of apoplexy in 1867.

He was an earnest Christian gentleman, and liberal in his donations for benevolent and Christian objects, having only a moderate fortune, one half of which was left for similar purposes. His wife and his only daughter died before him.

ELIAS B. D. OGDEN was the son of Governor Aaron Ogden, and was born at Elizabethtown in 1800. He graduated at Princeton in 1819; was licensed as an attorney in 1824, as a counselor in 1829, and was made a sergeant at law in 1837, and was the last lawyer raised to that dignity in the State.

He practiced his profession for several years in Paterson, and was prosecutor of the pleas two terms. He was once or twice a member of the legislature, and for a time president of the bank. In 1844 he was a member from the County of Passaic of the constitutional convention, and took an active part in the deliberations of that body.

In 1848 he was appointed by Governor Haines one of the justices of the supreme court, in the place

of Judge Whitehead, whose term expired. He was reappointed in 1855 by Governor Price, and again in 1862 by Governor Olden. Until we sat together on the bench of the supreme court, I had only a general acquaintance with him; during the eleven years we were associate judges, our relations were always friendly. If we did not always agree in opinion, and as independent thinkers that could not be expected, we differed with cordial respect for each other. He was a man of strong intellect and much natural sagacity; highly respectable, but not distinguished as a judge. Educated in the old federal faith, like his father, he preferred Jackson to Adams, and thus became a member of the democratic party, to which he adhered with moderation during his life. Like most of those belonging to that party in New Jersey, who, whatever opinions they entertained in regard to the origin or conduct of the war with the Southern Confederation, deemed it their duty to aid in bringing it to a safe conclusion, so as to maintain the integrity of the Union, he carefully abstained from giving countenance to any attempt to oppose the measures of the federal government. In the case of *The State vs. Zulich*, reported in 5 Dutch. 409, he ruled that, as a judge of the state court, he had no authority to interfere for the release of a person charged with an offense against the laws of the United States.

Judge Ogden continued to reside in Paterson until 1858, when he returned to his native town, and to the old homestead of his father. In the early part of 1865 he was attacked by pneumonia, which terminated his life. He was a member of the Protestant Episcopal Church, an active, influential member of the conventions of that denomination, and a trustee of the college at Burlington.

STACY G. POTTS was one of the justices of the supreme court one term of seven years. The paternal ancestor, from whom he was the fourth in descent, was Thomas Potts, a Friend, who emigrated from England with his wife and children, in company with Mahlon Stacy and his family, in the ship *Shield*, and landed at Burlington in the winter of 1678, she being the first ship that went so far up the Delaware. Stacy was a leading man in the Society of Friends and in the government of West Jersey. The families of Stacy and Potts intermarried, and thus the two names were interchanged in both. Stacy owned a plantation of eight hundred acres on both sides of the Assanpink Creek, which he sold in 1714 to Colonel William Trent of Philadelphia, from whom the city of Trenton took its name.

Stacy Potts, the grandfather of the judge, was a tanner, and carried on his business at Trenton. His residence was on the west side of King (now Warren) Street, opposite Perry, and during the Revolution and afterwards he kept a house of entertainment. Colonel Rahl had his head-quarters there in December, 1776, and when he was mortally wounded, was taken and died there.

The father took up his residence at Harrisburg, and in 1791 married a Miss Gardiner of Philadelphia, a Presbyterian. Their son, Stacy Gardiner Potts, was born in Harrisburg in November, 1799. Very soon after his birth his father purchased a large tract of unimproved land in Northumberland County, Pennsylvania, where Stacy continued to reside until the year 1808, when the father and son walked together to Trenton, a distance of one hundred and twenty miles, arriving at the latter place on the fourth day of their

journey. When they arrived at the bank of the river opposite the city, and before crossing the bridge, then newly erected, the boy remarked, "I like the looks of that place ; I think I shall live there all my life."

Stacy took up his residence with his grandfather, then mayor of the city, and commenced his education in the Friends' School. After four years thus passed, he was entered as an apprentice in a printing-office ; and having access to a bookstore, and being a member of a debating club established by the teachers of the Presbyterian Sunday-school, of which he was one, he became a diligent reader, and cultivated a taste for speaking and composition, soon contributing articles in prose and verse for the newspapers.

In 1821, when he became of age, he was employed as editor of the "Emporium," a weekly newspaper, for which, and for a magazine published in Philadelphia, he wrote many articles. Having married, while thus maintaining himself and family, he commenced the study of law, for a short time with Mr. Stockton, but mainly with Garret D. Wall. He was licensed, as an attorney in 1827, and as a counselor in 1830. During his year of preparation, he was obliged to earn his maintenance by continuing to edit the "Emporium," which became a leading democratic paper and supporter of General Jackson. He also taught a class in a girls' school for an hour each day. In 1828 and 1829, he was elected to the legislature as a Jackson Democrat. In 1831 he was elected by the joint meeting clerk of the court of chancery ; and was reëlected in 1836, holding the office ten years. This he made for the first time a very lucrative office, more, however, as I have heard him say, by making himself thoroughly acquainted with the practice and proceedings in equity,

and by drawing the necessary process, decrees, etc., for the solicitors, for which they were glad to allow him their fees, than by the proper business of the office. He thus, and by his subsequent practice as a lawyer, acquired a very handsome competency. In 1841 he published a book of chancery precedents very useful to the bar, and still in demand.

At the close of his clerkship, his health, always feeble from something resembling hereditary gout, having suffered from his close attention to his laborious occupation, he made a voyage to Europe, in company with his brother, the late Rev. William S. Potts, D. D., an eloquent preacher in St. Louis. And it is to be noted that he had another brother in the ministry, the Rev. Theophilus G. Potts, who died in 1844. He was a careful observer of the legal proceedings in the courts of Great Britain, and visited most of the remarkable places in that country, and some on the Continent, returning greatly benefited by the timely relaxation. In 1844 the honorary degree of A. M. was conferred on him by Princeton College. In 1845, in conjunction with Peter D. Vroom, Henry W. Green, and William L. Dayton, he collated and revised the statute laws of the State, the labor of the arrangement, printing, and index falling mainly on him. In 1847 he was appointed one of the first managers of the State Lunatic Asylum, continuing in the board until he went on the bench.

In 1852 he was nominated by Governor Fort, and confirmed by the senate, one of the justices of the supreme court, taking as his circuit the counties of Gloucester, Camden, Burlington, and Ocean, the court then consisting of five judges. He was associated with Chief Justice Green and judges Ogden, Elmer, and

Haines. Up to the time of his appointment as clerk of chancery I had but a slight acquaintance with him, and during that time only such as our business relations required. When we came to be associated during seven years as judges, our relation became intimate, and my esteem for him grew with every recurring year of our intercourse.

Although quick to learn, and earnest to fulfill his duties, as might be expected from his previous training, when he took his seat on the bench he was deficient in some branches of legal learning. He had had no experience in criminal proceedings, nor was he well versed in the more abstruse branches of the law of real estate. But he was, on the whole, a very good judge, and deservedly popular with the bar and the public in general. He had no such pride of opinion as hindered him from being willing to correct any error into which he had fallen. In all matters relating to contracts and to equity, his knowledge was accurate and his opinions reliable. In consultation he was open to conviction, without the weakness of always deferring to the opinions of others. Although he wrote with great facility and in a good style, he was seldom willing to reconstruct his opinion, even if he changed his mind. A careful perusal of his opinion in the case of *Den vs. Philhower & Sowers*, 4 Zab. 801, will show that it was at first written in favor of affirming the judgment in the circuit court; but when on further examination of the current of decisions in the State, he found that this would be to hold rather what the law ought to be than what it was, he altered the last proposition on page 807, and thus came to a different result, in accordance with the opinion of all the other judges. But such a change of opinion is

not unusual. It happened in one case that I drew up an opinion, and, the case being reargued, became convinced I was wrong; but a majority of the judges thinking the opinion right adopted it with but slight alteration. Perhaps the most important case before Judge Potts was that of *Cornelius vs. Giberson*, 1 Dutch. 1, involving the location of the line between East and West Jersey. His ruling on that question remains undisturbed, although the judgment was reversed on the question of fact as to adverse possession.

A case occurred in the spring of 1856, which, although it related to a serious subject, afforded me a good deal of amusement. One of the Camden steam ferry-boats took fire while crossing the river, and a number of persons, including some residents of Philadelphia, lost their lives. This tragedy excited much feeling, increased as usual by the comments of the newspapers, and there were strong statements that the directors of the company would be indicted for murder in the city, and there was real danger of a result that might be very unjust. In this state of affairs, by the advice of an astute lawyer, a formal charge of manslaughter was made in Camden against the respectable gentlemen who were the directors, one of whom resided in Trenton, and they were arrested. As an ordinary magistrate could not bail them, Judge Potts was sent for in haste and held the accused to a pretty heavy bail.

When I saw him a few days afterwards, he told me very gravely of the circumstance and of the agitation displayed by some of the individuals bailed, one of whom actually shed tears. It had happened that the prosecutor of the State for Camden County had been

called away from a court I was holding to attend the examination of the prisoners, and had found himself obliged to excuse himself by explaining the whole affair. It thus became known to me that the real object was to enable these defendants to avail themselves of the provisions in the compact between Pennsylvania and New Jersey, respecting jurisdiction over the river Delaware, that each state should have concurrent jurisdiction over crimes committed on the river, but that the investigation and determination thereof should be exclusively vested in the state wherein the offender should be first apprehended, arrested, or prosecuted. But Judge Potts and most of the defendants were kept in profound ignorance of this purpose, and thought they had been engaged in a very serious transaction, and it was with difficulty I could make the judge understand that probably nothing more serious would occur than that several very respectable gentlemen would be delivered from an unpleasant charge. The result was that a bill of indictment was duly drawn and laid before the grand jury of Camden County, who examined the witnesses and ignored the bill ; and the accused, when subsequently indicted in Philadelphia, upon this fact being shown, were discharged.

Upon the expiration of his term of office, in 1859, his health had become so much impaired that he declined a reappointment, and replacing his library with literary, historical, and religious books, he devoted his time to their perusal, together with the Scriptures, and commenced a work entitled, "The Christ of Revelation," in which he made some progress, but did not live to finish. His principle as to the disposal of his income is worthy of record as an

example. His resolution was "to practice a rational economy in my own expenditures, and a liberal profusion in the cause of my Master, who has given me all I have."

His mother was a Presbyterian, and made her first profession of faith at Trenton in 1810, and shortly afterwards her husband with their four children were baptized. The judge's own record of his religious impressions, derived at first from his mother, is as follows: "I do not remember when I had no serious thoughts. As my mind opened to comprehend the goodness and beneficence of God in his Providence; his glory and power as exhibited in nature; and his wondrous love in redemption, my heart was often filled with love and my eyes with tears. My young circle of friends numbered some ardently pious students of theology, as I grew up; but I was resolutely opposed to the Calvinistic scheme.

"In the year 1817-18, my connection with the Sabbath-school introduced me into the delightful young circle at the Rev. S. B. How's, the pastor; and here Scott's 'Force of Truth' was put in my hands by his brother, the late Dr. James C. How of Delaware. I read it carefully, and became convinced that I was wrong, and that no other scheme can be reconciled with a full, intelligent conception of the infinite perfections and attributes of God. This removed every difficulty in the way of my uniting with the Church, except a timidity which hung about me like an iron chain, and which still kept me from a public profession, notwithstanding my convictions of duty, my mother's earnest prayers, and the advice of friends, until the approaching responsibilities of the married life fixed my purpose." He was received to the com-

munition of the Church in 1822, and was ordained a ruling elder in 1836.

He was at different times connected with various boards and institutions of the Church. When a member of the General Assembly in 1851, he was made chairman of a special committee to arrange the complicated finances of the Church. His report, presented the next year, and published in full in the appendix to the minutes, elicited great admiration for the skill and labor it evinced, and placed the accounts (arranged in fifty-six different schedules) on a permanent basis. He was engaged in the Sunday-school as a teacher or superintendent thirty-six years. He was a diligent reader of the Bible. A few months before his death he wrote, "I have read the Bible through many times, and portions of it daily for now nearly sixty years; but a close, critical, and prayerful re-reading, as a study, interests me exceedingly. Truly it is a fountain of exhaustless light and life."

His health continued to decline, and in 1865, manifestly matured in grace through his afflictions, he entered upon his rest. In preparing this notice of him, I have made free use of an article in a Trenton newspaper, written, I believe, by his pastor, Rev. Dr. Hall.

CHAPTER XIII.

JUDGES I HAVE KNOWN.

JOSEPH C. HORNBLOWER. WILLIAM L. DAYTON. EDWARD W.
WHELPLEY. GEORGE H. BROWN.

JOSEPH C. HORNBLOWER was chief justice of the supreme court fourteen years, chosen by the joint meeting in 1832, upon the death of Chief Justice Ewing, and reëlected in 1839. As the president of the Historical Society, he has been fully commemorated in a memoir read before the society by his successor in that office, the late Judge Field, and published with its proceedings.

At the time of his appointment he was fifty-five years old, having been born at Belleville, in Essex County, in the year 1777. His father was from England and by profession a civil engineer, who came to this country in 1753; was a member of the legislature and a delegate to the Continental Congress, and died in 1809 at the age of eighty years.

The future chief justice was the youngest of twelve children, and was a small and delicate child, of a feeble constitution and sickly habit, and seemed destined to an early grave; indeed I have heard him say, after he had passed his threescore and ten years, that he never expected to live so long. Although he did in fact live far beyond the year when, according to the inspired Psalmist, the strength of man is labor and sorrow, he was all his life of feeble health; and

it cannot be doubted, that, although by no means deficient in mental acumen, his want of that resolute self-will which seems necessary to produce a firm adherence to settled opinions, the absence of which was his chief defect as a judge, was owing to this physical constitution. At the age of sixteen he had an attack of paralysis, from which he recovered very slowly. After a service of ten years in New York with a brother-in-law engaged in mercantile business, he entered the office of David B. Ogden, then a young and rising lawyer in Newark, afterwards a distinguished lawyer in New York. Not having taken a degree in any college, it became necessary for him, in accordance with the rule then in force, to serve a clerkship of five years before he could be licensed as an attorney. In February, 1803, he was admitted to the bar, became a counselor in 1806, and in 1816 a sergeant at law. Before his admission to practice, he was taken into partnership with his preceptor. His business as a lawyer soon became large and lucrative.

He married a granddaughter of Dr. William Burnet (an elder sister of Mrs. Governor Pennington), and resided all his life in Newark. When I became acquainted with him, I regarded him as the ablest advocate at the Newark bar. His talents were such as better fitted him for this position than for that of a judge. He was untiring in his industry, and his knowledge was always at his fingers' ends and ready for use. He belonged to that class of lawyers who easily persuade themselves that their client's cause is just, and was sometimes very slow to see the justice of an adverse decision. But he aimed scrupulously to confine his efforts within the limits of fair argument, and was too honest himself knowingly to

countenance any one in an attempt to commit a wrong.

When brought forward for the appointment of chief justice, those opposed to him objected, with at least an appearance of truth, that he had every requisite of a good judge but sound judgment. He was not deficient in legal learning, nor was he behind the most distinguished ornaments of the bench in the most inflexible love of justice and right. He thought rapidly, it may be said too rapidly; indeed he often seemed to think aloud, and did not take time to mature his opinions. At the circuits he was apt to decide hastily; and when cases argued before the full bench were held over, he not infrequently drew up two opinions, on opposite sides of the questions involved, and it was by no means certain which he would himself adopt. Most judges encounter doubts, difficulties, and misgivings, alternations of opinion, in the steps by which they reach their conclusion, and cannot be very safe judges if they do not; because in some cases the line between the rights and justice of the two sides is by no means distinct, and the legal result depends upon the balancing of quite uncertain analogies; but commonly only the final result is seen. In more than one case in my own experience that result was reached at last in a way quite unexpected at the beginning. In one case in which I sat with three other judges, when we came to confer we were equally divided, an opinion one way having been drawn up by two of the judges, while mine, with which one of the judges concurred, was directly opposite. After considerable discussion the case was laid over until the succeeding term. When we came again to consider it, the leading

opinion opposed to mine was abandoned, and finally the decision was announced and appears in the official report as the unanimous opinion of the court. In a much earlier case in which I was counsel, when the court consisted of three judges, two of whom agreed to a decision against my client, I learned afterwards that at the first two of the judges had written opinions the other way, but finally one of them changed his mind and thus changed the result.

In the case of *Cumberland Bank vs. Hann* (a German surname corrupted from Hahn), reported in 4 Harr. 166, I was counsel, and which was first argued before the circuit court, the chief justice drew up an opinion before he had time to return to his home, which was communicated to the counsel, and which was very strong for my clients. After his tour of circuits was through and he had leisure to look into the prior authorities, he recalled his opinion and caused the case to be certified to the supreme court, and then delivered the opinion as reported, which modified quite materially his original opinion, both in respect to the final decree and the principles upon which it was founded. The faults of the judge were indeed the faults of a generous and noble nature. He was always anxious to arrive at a right result, and if he fell into an error was ever ready, even hasty, to repair it.

I was present at the trial of a case before him at the Salem circuit, which showed his disposition very plainly. It was an action against a respectable white citizen, by a mulatto man, for the alleged seduction of his daughter, in which a fee was offered to me in behalf of the plaintiff, which I declined. The counsel for the plaintiff was incompetent, and in fact was

about to leave his case liable to a nonsuit at the beginning, had not the judge prompted him, and indeed shown a most decided sympathy for the plaintiff, occasioned in part by his deep feelings in behalf of the colored race. The testimony of the daughter, unsupported however, made out a tolerably plausible case for the plaintiff; but when two or three witnesses had shown her story to be false, he stopped the cause, told the parties it was unnecessary to go any farther, and advised, almost constrained the plaintiff's counsel to submit to a nonsuit.

The style of Chief Justice Hornblower was remarkably clear and correct, and cannot but be regarded with surprise when it is remembered that his early education was defective, and that he was obliged to confine his reading very much to law books. And he wrote with great rapidity and ease. Many of his opinions, as reported by Green, Harrison, and Spencer, are well worthy of diligent perusal, and although sometimes deficient in logical precision, and sometimes apparently written from impulse rather than from cool reflection, they often elucidate perplexing questions very forcibly.

As the presiding judge of the courts of oyer and terminer in the different counties of the State, he sat in several very important cases of murder, and conducted them to a very satisfactory result, presenting the cases to the juries in charges directly to the point, and calculated to lead them to the right conclusion. This function of a judge is indeed the most important of all. Attempts have been sometimes made to interfere with this high prerogative, and even to go so far, as several States have, as to prohibit the

judge from closing the case with a direct charge ; but hitherto, as it is to be hoped they always may be, without success. Under the direction of a competent judge the trial by jury, in criminal and in civil cases, is of great value ; but left to themselves, or badly instructed, a jury is very often wholly unfit to decide a complicated case, and where there is room for partiality or prejudice is very unsafe.

In the case of *The State vs. Spencer*, reported in 1 Zab. 197, he delivered an opinion on two very important and interesting questions, in both of which he laid down correct principles, which have had a marked and beneficial influence in this State and elsewhere.

The first related to the law of challenges to the competency of jurors to serve, who had expressed or formed an opinion on the guilt or innocence of the party accused. Chief Justice Marshall, perhaps in accordance with the previous practice in Virginia, upon the trial of Burr for high treason, permitted each juror, when he was called, to be asked if he had ever formed or expressed an opinion upon the case. The first man called answered, "I cannot say that I have, since I have been summoned ; before that I have in my own mind." He was set aside ; and out of the first panel, of whom thirty-eight appeared, only four were accepted, and more than a week was consumed in obtaining a jury. This example was generally followed throughout the United States, and produced difficulties and delays very injurious to the due administration of criminal justice, the evil effects of which are still felt in many of the States. The chief justice, following to its legitimate results the decision of the supreme court, announced by himself in the

case of Mann. *vs* Glover, had the courage to go back to the true practice, although it was acknowledged that the courts in the State had generally followed the ruling in Burr's Case. He laid down the law to be, as it has been since expressly ruled by a full bench of the supreme court (State *vs.* Fox, 1 Dutch. 566), that it does not constitute a good cause of challenge to a juror, that he has formed and expressed an opinion of the guilt of the prisoner founded upon his knowledge of the facts, or upon information supposed to be true. A declaration of opinion to disqualify a juror, must be such a one as implies malice or ill-will against the prisoner. Chief Justice Green, in deciding this case,— who on several occasions overruled the opinions of his predecessor,— referring to the decision in the Spencer Case, remarks, “It is believed to have met the general approval of the profession. While its adoption has avoided much delay and embarrassment in the empaneling of juries, it has not been found to operate prejudicially to the rights of defendants. The most unequivocal proof of the truth of this statement is found in the fact that, although the rule has been adopted and applied on the trial of at least thirty capital cases since its adoption in Spencer's Case, and although convictions for murder, or for crimes of lower degree, have taken place in a large number of these cases, no exception has been taken to the rule, nor has the question been in any way hitherto presented for consideration to this court.”

The other question discussed was the law of insanity, upon which the defense was rested. On this difficult subject his charge was altogether satisfactory, except, perhaps, his definition of the crime of murder

in the first degree, as distinguished from the crime of murder in the second degree, which is not included in the report by Zabriskie, but which has been copied into the text-books on this subject, with which I have never felt entirely satisfied. He said, "The premeditation or intent to kill need not be for a day or an hour, nor even for a minute. For if the jury believe there was a design and determination to kill distinctly formed in the mind at any moment before, or at the time the pistol was fired, or the blow was struck, it was a willful, deliberate, and premeditated killing, and therefore murder in the first degree." Although I cannot say that if sitting in a court of error I should hold that such a charge was so erroneous as to require a reversal of the judgment, I can say that I was never so well satisfied with it as to use such language. I much preferred to say, and in several cases of murder did say to the jury, that to constitute murder in the first degree the killing must have been willful, deliberate, and premeditated, and that although the law specified no time during which the intention to kill existed, yet the jury ought to be satisfied the intention was formed before the act was committed which resulted in death.

The decision in the case of *Clark vs. Richards*, 3 Green, 347, concurred in by Judge Ryerson, but from which Judge Ford dissented, occasioned much surprise to the older members of the profession, it having been previously understood that the language of the ninth and tenth sections of the act for the limitation of actions, originally passed in 1799 (Pat. Rev. 353), now the tenth and eleventh sections (Nix. Dig., 4 edit. 512), was too plain to allow any other interpretation than that all the disabilities named in the

statute that existed between the beginning of the adverse possession and the commencement of the suit, must be deducted from the twenty years which barred an action. However incorrect as an interpretation of the meaning of language, it undoubtedly brought the law more in accordance with sound policy. I was myself of counsel in a case where the title of the plaintiff had accrued nearly forty years before the action was brought; but she was a widow, who, although twice married within the time, had not been without a husband more than five years of the whole period. She lost her case, but on another point. At one time the law as declared in *Clark vs. Richards* came very near being overturned by a decision of the supreme court. In a case heard before four of the judges, of whom I was one, nearly twenty years afterwards, this question was again raised, and the three judges associated with me were at first disposed to overrule the previous decision. It happened, however, that we were all agreed that another point in the case was decisive for the defendant, and I strongly urged that it was unwise to disquiet titles by questioning a decision that had been so long acted upon. This consideration finally prevailed, so that now, after a lapse of thirty-five years, it is not likely that the rule, as now understood, will be disturbed. All the judges associated with me thought the law ought to be as it was held in the case of *Clark vs. Richards*; and if they had decided that it was otherwise, would have joined in taking measures to have the law altered by the legislature. It should be noticed that Judge Ryerson and Mr. Griffith were mistaken in supposing the original act to have been drawn by Paterson. It does not appear in the drafts he left of the acts pre-

pared by him; before it was passed he had ceased to report any new acts.

Hornblower was one of the members of the convention to prepare a new constitution in 1844, and took an active part in the formation of the instrument submitted to the people of the State and adopted by a large majority. They were a select body of men, designated in each county so as to represent both the political parties, and thus chosen without a contest. In many respects the constitution they framed was a great improvement of the old one; but in many respects it is very defective, so that I think it cannot be long before it will be remodeled. The great defect, in my opinion, is the limitation of the governor's veto, so that a bare majority can pass a law notwithstanding his objections. This departure from the provision on this subject in most of the state constitutions, as well as in that of the United States, was probably occasioned by the fact that President Tyler had recently vetoed a new charter of the United States Bank, and greatly disturbed the business community. But nothing is more apparent than that there is little danger of too much checking the tendency to over legislate.

When the second term of the chief justice expired in 1846, the power of appointment was vested in the governor with the advice and consent of the senate. A gentleman agreeing with him in polities filled that station, but he declined to nominate him, it was currently said, on the ground that in the convention of which they were fellow-members, he had shown too much disposition to change his opinions. I have always thought the decision uncalled for, and were it not that he selected a very superior man to succeed

him (H. W. Green, who is still living), it would probably have been more complained of than it was.

After the close of his judicial labors, he engaged to some extent in business as a lawyer; but younger men had taken the lead at the bar, and he did not meet with much success. He was, however, by no means idle. The College of New Jersey had in 1841 conferred on him the honorary degree of LL. D., and in 1847 he was appointed professor of law, with the hope that he would take up his residence in Princeton and aid in building up a permanent school of law. But no adequate salary was attached to the office, and although he accepted the appointment, he was unwilling to leave the residence in which he had spent so many years. He delivered a course of lectures, but there was no sufficient encouragement to continue them, and he gradually withdrew his attendance, and after a few years resigned the office.

He had been for many years a ruling elder of the Presbyterian Church, and during his most busy years took an active part in all religious and benevolent associations; was one of the original members of the American Bible Society, president of the New Jersey Colonization Society, and was president of the New Jersey Historical Society from its foundation, besides being a member and a liberal contributor to the tract and missionary societies.

He was in politics a Federalist, and afterwards a Whig and Republican, and a warm advocate of Mr. Clay. His anti-slavery feelings were especially strong, and indeed radical. He was one of the convention that nominated Fremont, although I believe his preference was for Judge McLean, who in all probability might have been elected, but was not radical enough

for those who controlled the movement. He was nominated and chosen one of the presidential electors in 1820, and president of the electoral college of New Jersey who gave their votes for Lincoln and Hamlin.

In private life Mr. Hornblower was an interesting companion, and was very fond of society, disliking to be alone. For a time I boarded in the same house with him at Trenton, and occasionally we occupied the same room at night. He was open and free in his communications, often going into details in regard to his feelings, which most men scrupulously hide. He was not without defects; but I believe he was an humble, sincere, and devoted Christian. He was a thoroughly honest and truthful man. He had nothing to conceal; no one could associate much with him without becoming acquainted with his inmost thoughts and feelings. He had the misfortune to lose the wife of his youth after she had borne him a large family of children, most of whom survived him. After her death he loved to dwell on her virtues and the happiness he had enjoyed with her, and more than once I heard him detail the melancholy scenes of her death. At a subsequent period he married a daughter of Colonel John Kinney, of Morris County, with whom he lived most happily, and who soothed his declining years with the most tender attention. He died in 1864, having passed the eighty-seventh year of his age.

WILLIAM L. DAYTON was a justice of the supreme court from 1838 to 1841. He was born near Baskingridge in the County of Somerset, in the year 1807, and was the son of Joel Dayton, who was the grandson of Jonathan Dayton, a descendant of Ralph

Dayton, who came from England to Long Island about the year 1650. Jonathan Dayton settled at Elizabethtown about the year 1720, and was the founder of a family of much distinction in the State, his son Elias Dayton being a general during the War of the Revolution, and the son of General Dayton, Jonathan Dayton, was a member of the convention which formed the Constitution of the United States, speaker of the house of representatives under that constitution, and a member of the senate. William L. Dayton's mother was a granddaughter of Edward Lewis, a commissary of the American army during the Revolution.

Judge Dayton had his preparatory education in the classical academy, so long famous, at Baskingridge, then taught by Rev. Dr. Brownlee, a worthy successor of Dr. Finley. He then entered the college at Princeton, and graduated in 1825, and was among those who, rather slow in acquiring knowledge and in maturing their powers, are apt in the end to shoot ahead of those more precocious youths who fall short of the distinction their school days had seemed to promise. His person at this time was unusually slender, and his health feeble; nor did he in after life ever acquire robust health, although his person became well proportioned, and his general appearance dignified and prepossessing.

He studied law at Somerville with Peter D. Vroom, afterwards governor of the State; and although they afterwards occupied prominent situations, on different sides, in the antagonistic parties that contested the rule of the State, the friendship formed between the preceptor and the pupil was never interrupted.

Mr. Dayton was licensed as an attorney in 1830,

and as a counselor in 1833. He then selected Freehold in the County of Monmouth as his place of business, and continued to reside there until after he was made a judge. He very soon won a place among those first in the profession. During all his life, however, a remark in his address before the college societies delivered in 1843, might be applied to himself. Urging upon young men the importance of self-reliance, he said: "And permit me, in the first place, to refer to a principle of our nature antagonistical to the exercise and development of this faculty. I mean the *vis inertiae*, of the animal, as opposed to the intellect of the man. It is more pervading and controlling in its effects than the vanity of our nature will admit."

He was not, properly speaking, an indolent man; his acquirements in after life forbid any such supposition; but it always required a great exertion to bring the powers of his mind into full exercise. Called to argue a cause with a competent associate, he would sometimes so entirely rely on him as greatly to disappoint his friends. But put him under the whip and spur of necessity, and he would prove himself possessed of a clear and logical mind, and to be full of resources, equal to the successful management of the most difficult case. His cautious moderation and good sense, always manifest; his pure morals and correct deportment, and his unswerving integrity, gave him great weight of character and corresponding influence.

Pretty soon after he commenced business as an advocate, one of those fortunate opportunities occurred, which, when well improved, often serve to introduce a capable lawyer to the notice of the public.

It happened that he was retained to defend a well known citizen, indicted for an assault and battery, whose expected trial before the court of oyer and terminer, over which Mr. Justice Ryerson presided, excited much attention, the prosecution being conducted by Mr. Attorney-general White. Mr. Dayton, discovering that the grand jury had not been duly summoned and returned, moved to quash the indictment, and after a short argument succeeded, the result being that all the indictments returned during the term were declared illegal.

“All this was followed,” remarks a gentleman who was present and communicates the incident, “by a buzz through the then little village of Freehold. Young Dayton’s name was upon everybody’s tongue. You could hear the exclamations: ‘What! all the indictments quashed? No criminal business this term? That Dayton is sharp; he knows more than we thought;’ with sundry similar expressions of commendation. From that day Mr. Dayton had no lack of clients; he soon became the leading lawyer of the place, and prospered rapidly.”

After only a few years’ practice as a lawyer, he was brought into public life by the whig party, to which he belonged. The electoral vote of the State was carried for Harrison and Granger, against Van Buren, in 1836; but not the legislature. But in 1837 the Whigs succeeded in electing a majority of the legislature.

Mr. Dayton was put at the head of the ticket in the County of Monmouth, generally a stronghold of the democracy, and all obtaining a majority, he thus became a member of the legislative council, elected for one year. He was placed at the head of the

judiciary committee, and became a leading member of the legislature. The bar had for years favored such a change of the judiciary as would supersede the old county courts; but acts introduced for this purpose had several times failed. This year the measure was recommended by Governor Pennington, and a law was passed creating two new judges and constituting the circuit courts, held by a justice of the supreme court alone, courts of original jurisdiction. This law was not originally drawn by Mr. Dayton, but it underwent his revision, and was advocated by him.

At the adjourned session of the legislature, held in February, 1838, John Moore White and William Lewis Dayton were elected the new judges, one of them from among the old and the other from the young members of the bar, Mr. Dayton having been a counselor not quite five years. Young as he was, his qualifications for the office were not disputed, although I think it may be said of him as of Mr. Southard, that his true place was not on the bench. Highly respectable in that position, he was perhaps better fitted for the business of legislation and diplomacy.

The opinions of Judge Dayton, recorded in Harrison's Reports, show him to have been an able judge; and his dignified and popular manners made him always acceptable to the bar and to the public. Perhaps as good an example of his sound and discriminating judgment, and of his faculty to express his opinions in a lucid style, will be found in the case of *Freeholders vs. Strader*, 3 Harr. 110, where he established the principle, ever since adhered to, that public officers charged with a duty to the public, like

the board of chosen freeholders in the erection and repair of bridges, are not liable to an action by an individual for an injury arising from a breach or a neglect of that duty.

He had however occupied a position on the bench but a short time before he found that the emoluments of the office, then not reaching beyond two thousand dollars, were too small to defray comfortably the expense of an increasing family at his new residence in Trenton; and it was reasonably certain that his gains at the bar would be much greater. He therefore resigned the place at the spring session of 1841, and entered again upon the practice of his profession.

But the death of Mr. Southard the next year, opened for him a new career as a senator of the United States, to which place he was appointed by the governor in July, 1842, and he was chosen by the legislature in October to fill the remaining term, of about two years and a half. And he was again elected in 1845 for a full term, so that he was a member of the senate nearly nine years. When he entered the senate, Tyler was the President, and had soon shown how entirely he differed from the party that had elected him in regard to at least two important subjects, namely, the tariff and the bank, both deemed by the Whigs at that time of the highest importance. He voted for the tariff then enacted, afterwards so thoroughly changed. At the next session he was placed on the judiciary committee, of which he remained a member during most of the time he was in the senate. But he did not make himself very conspicuous as a speaker; indeed, it was only when there was a strong pressure upon him, on account of some special interest he felt in the question under discussion, that

he could be induced to speak at all. After he had been a member more than a year, Mr. Woodbury, secretary of the treasury under Jackson, and afterwards one of the justices of the supreme court of the United States, who had himself recently returned to the senate, and with whom I was intimate, asked me why New Jersey did not send abler men to the senate. I replied that in my opinion we were represented then by two of our best men, although they differed from me and him in politics. The truth was that Mr. Dayton was superior to Woodbury himself, who was distinguished for very little but great industry and honesty of purpose.

The first speech made by Dayton was in February, 1843, in defense of the character and credit of the government, then suffering at home and abroad, from the failure of several States to pay the interest on their debts. The subject of these debts being before the senate, he offered a resolution, "That the distrust and obloquy cast upon the federal government, by reason of the failure of certain States to make prompt payment of their debts, was an unjust and unfounded imputation upon its credit and good faith; that while this government deplored the misguided policy of those States, it disclaimed all liability for such delinquency; and in vindication of its own unblemished faith and honor, it appealed with confidence to its history." One object he had in view seems to have been to discountenance the idea of the general government interfering in any way with the state debts, by assuming, even indirectly, any responsibility in regard to them; and the other was, to vindicate the faith and credit of that government as above suspicion.

He said: "Sir, there is no government in the world whose credit ought to stand higher than that of these

United States. There has none, not one, acted with a faith more pure. Not a man of the Old World, or the New, has lost a dollar by its promises." And then, after enumerating the immense debts of the European governments, he said : " With these budgets of iniquity on their backs (fruits of rapine and war), they stagger along like the old sinner in Bunyan's allegory; reading homilies to us, doubting whether we can follow. We, in lusty youth, carrying the weight of a thistle-down, and with an inheritance stretching from sea to sea."

Many democratic politicians have advocated the erroneous doctrine, that inasmuch as the state legislatures are intrusted with the duty of electing the senators, they are entitled to consider them as their representatives, and to instruct them how to vote upon any particular measure; and in many cases, when it was supposed some favorite object could thereby be effected, the other party have adopted the same principle. Early in his service Mr. Dayton repudiated this doctrine in very decided terms, and stated the fact that when himself a member of the New Jersey legislature, he had refused to vote for resolutions instructing General Wall. He said: "If the legislature of New Jersey go farther than to advise me of their wishes, — to communicate what they believe to be the sentiments of our common constituents, — they usurp a power which does not belong to them. Firmly, and yet respectfully, I shall repel every attempt to encroach in this or any other form upon my constitutional rights."

Upon the tariff question, then as now so seriously disputed, and upon which our best and wisest statesmen seem so widely to differ, looking at it as they

necessarily do from such different stand-points, he took sides very decidedly with those who insist upon a strong protective tariff. This indeed is considered by most Jersey men so entirely in accordance with their interests, that in the spring of 1844, when I represented the first district, comprising South Jersey, although from careful study fully convinced that it is a great error, I felt constrained to move to lay on the table the bill materially altering the whig tariff of 1842, and thus to defeat it. The result was, that the next Congress passed the act of 1846, far more materially reducing the duties than had been attempted in 1844.

Mr. Dayton made several speeches during the presidency of Tyler and Polk, which began to attract attention to him as a rising statesman. He of course opposed the tariff of 1846, which passed the senate only by the casting vote of Vice-President Dallas. In this speech, he had special reference to the manufacture of glass, then and now largely carried on in South Jersey. A circumstance occurred to myself in this connection which it may be worth while to mention, because I think it shows how a present interest, real or supposed, is usually allowed to prevail over a prospective good. One of the most intelligent and successful glass manufacturers in my district, who resided in Philadelphia, and was a very decided Whig in politics, had told me in conversation, that he had carefully examined the whole subject in reference to glass, and was entirely satisfied that the duty imposed by the tariff of 1842 was too high, and that the business would, on the average, be more prosperous if it was reduced, for which he gave me reasons I thought entirely satisfactory. When the

amendment proposed in 1844 was before Congress I wrote to him, requesting the views he had communicated to me verbally to be put in writing. The reply was that although his individual opinion remained unchanged, his partners were of a different opinion, and he therefore preferred not to interfere.

Although he agreed with his political friends in thinking the administration of Polk had unnecessarily provoked the war with Mexico, he voted for the required supply of men and money. The course of the executive in ordering the army under General Taylor to take a threatening position, which in some quarters has been referred to as precedents for the recent course of President Grant in reference to San Domingo, he denounced as the "gross unconstitutionality of his conduct in making war upon Mexico without the consent of Congress, which is by the constitution the war-making power." He also advocated the Wilmot Proviso, designed to prevent the extension of slavery into free territory and thus the increase of the number of slave States. But he was careful for himself and his constituents to disclaim any intention or desire to question or impair the rights of the South.

But the policy and speech in sustaining it, which attracted the most attention, and in fact made him afterwards a political leader, was the taking ground in the secret session of the senate, in opposition to Mr. Webster and most of the old Whigs, for the ratification of the treaty with Mexico, approved by the administration. The opposition to it arose principally from the fact that it included a cession of Mexican territory, the New England States being always, from the time Louisiana was purchased to this day,

opposed to any acquisition of new territory at the South or West.

Mr. Webster took an early opportunity of denouncing the treaty in open senate. Mr. Dayton took the lead in answer to him, and among other pertinent remarks, said : —

“ I am, for one, prepared to meet the responsibility involved in the ratification of that treaty; and after the speech of the distinguished senator from Massachusetts, read as it has been in every town, village, and hamlet of my State, I feel, as others similarly circumstanced must feel the necessity of a reply. I am here to answer. I here and now declare to my constituents and to the world, as I understand I have a right to declare, my own action upon that subject. I here then declare, that in this chamber and out of it, in official debate and by private appeal, in every mode, and by every legitimate means that I could bring to bear, I endeavored to sustain and enforce the ratification of that treaty. And I say, furthermore, if it be of the slightest interest to my constituents to know it, that while its fate was yet in doubt, I first broke ground in its favor, on this side of the chamber; for all which I am ready to meet the responsibility which that position demands.

“ I will not defend this treaty as a mere matter of bargain. I care not whether the senator from Massachusetts be right or wrong in the view which he has taken of this as a matter of bargain. I care not whether New Mexico be near to us or far from us; I care not how isolated may be its position; I care not though her plains be barren, though her hills be desolate, though every drop of water which trickles from her mountains be lost in her sands; I care not whether ‘grass grows or water runs,’ whether there be there ‘beasts of the field, or fowls of the air, or any creeping thing;’ not any or all of these considerations have controlled my action on this subject. In some respects, indeed, I do not know but fewer evils will grow out of this accession of territory, if it be the miserable and worthless thing that the senator has represented it, than if it were a good fertile country, inviting speedy settlement. But we do at least get something by the treaty. The administration get the ports of San Francisco and San Diego. They are at least of some value. The administration has surely the ‘fifteen pence in pocket,’ and for taking this little value, they are entitled to Falstaff’s apology; ‘Reason,

you rogues, reason. Think'st thou I'll endanger my soul gratis !' But as a mere master of bargain, something had for something paid, I care not though the thing be as miserable and contemptible as the senator describes it. The value of the country never seriously entered into my consideration as an element in the decision of the question."

After showing that the treaty afforded the only means of obtaining peace, he proceeded to discuss the policy of bringing more States into the Union, especially in reference to its bearing on the success of the Whigs as a party, and broke out with the question :—

"Are we Bourbon like, to forget nothing, to learn nothing ? Can we resist the conviction that what 'Oregon and Texas,' was in 1844. 'California and New Mexico' will become in 1848, only doubled, quadrupled in power ?

"The senator could not do otherwise than resist. He had in times past committed himself so far upon this question against territory, that he was hardly at liberty to weigh alternatives. But is it so with us all ? Is the great whig party so fully, so fatally committed upon this question ? Must we stand fast upon —

‘This narrow ledge, a yawning
Gulf below, a trembling torrent from above.
Can we not move ?’

Are we spell-bound. Could I believe that the power to acquire territory was yet an open question, and that the constitution clearly forbade it, though the heavens darkened over my head, and the earth trembled beneath my feet, there would I stand, stand with the senator, stand with the constitution :

‘Shield it, save it, or perish there too.’

"But I deny that it is so. If doubt ever existed, the past has settled it. One half of our country has become our country, in spite of such doubt. I feel that this is a question to be tried according to its effects and consequences ; and by my best judgment, aided by the best light that I can obtain, I am persuaded that the alternative of the line offered with present peace, is better than war for a year, with the chance of peace at its close and no territory. This conviction I declare, with the utmost respect for the distinguished senator from Massachusetts, and all others who may differ from me.

I hold that upon the issue which they would make up,—no peace unless without territory,—the whig party cannot survive the year. It will go down to the grave, and all its conservative principles will go down to the grave along with it; with some ‘wise saw’ upon its lips, it will die, doubtless, ‘the death of the righteous,’ ‘rejoicing in the hope of a glorious resurrection?’ Its enemies yonder will give it a kingly epitaph: *Hic jacet!*

‘I never said a foolish thing,
And never did a wise one.’”

I have quoted so much of this speech, because it not only brought Mr. Dayton before the country in a much more prominent position than he before held, but because it was the first indication of a new change in the political affinities of those who had before been regarded as the leaders of the Whigs. By the aid of General Taylor’s great popularity, produced by his victories and by the admirable official reports of them, written, as was afterwards understood, by his son-in-law, the whig party in the ensuing fall carried the presidential election by large majorities. Mr. Clay as well as Mr. Webster were then thrown out of position, and greatly disgusted. The cabinet selected by Taylor, himself a slaveholder and a Southerner, showed unmistakable signs of opposition to the plans of the Southerners; and had he lived through the term of office for which he had been elected, the opposition, of which Mr. Dayton was a part, would in all probability have increased in strength and influence. But his early death changed this tendency and turned the current the other way. Mr. Fillmore, who had been put on the ticket with Taylor as a counterpoise to his supposed pro-slavery proclivities, and was indeed classed among the abolitionists, sympathized with Clay and Webster and their supporters, and as soon as he was elevated to the presidential

chair formed a new cabinet, of which Mr. Webster as secretary of state was the head, all of whom were far more disposed to conciliate the South than their predecessors had been, and of whom I think no one afterwards joined the republican party. Mr. Clay remained in the senate, the supporter of this administration, but died early in 1852, as did also Mr. Webster later in the same year. Mr. Calhoun died in 1850, two or three months before the death of Taylor.

Mr. Dayton's term expired in March, 1851, and the Democrats then having a majority in the legislature of New Jersey, he was succeeded by Commodore Roberts F. Stockton, and resumed his profession as a lawyer. In June, 1856, the convention for the selection of a presidential candidate, which met at Philadelphia, and assumed for its party the name "Republican," nominated John C. Fremont for president, rejecting Judge McLean as not a sufficiently decided abolitionist, although it was well known he would have had the support of the great body of the Whigs, and would probably have been elected. Mr. Dayton was nominated by five hundred and twenty-nine out of five hundred and sixty votes, as their candidate for vice-president. It is said, and I suppose truly, that he had no intimation of such a purpose until after the nomination was made. He was no doubt selected for the same reasons that prevailed when Tyler was put on the ticket with Harrison, and which afterwards induced the selection of vice-presidents known to entertain opinions on many important subjects, very different from those of the great majority of the party; but agreeing with them in some overruling question. Mr. Dayton was no abolitionist, but had

been a supporter of the American colonization society, always fiercely assailed by the leading spirits of the party that nominated Fremont. He had in the senate opposed the extension of slavery into the new territories and states, and the fugitive slave law; but for himself and his constituents he disclaimed any intention or desire to question or impair the rights of the South. When his opposition to the extension of slavery was declared by Mr. Calhoun to be "an aggressive policy," he replied, "Aggressive upon what? Sir, aggression consists in attack; an effort to change, to violate an existing state of things."

The result was, that a large proportion of the Whigs, as well in New Jersey as elsewhere, refused to unite with the Republicans in supporting Fremont. Many of Mr. Dayton's warm friends belonged to this party, and without abating their attachment to him, but declaring their willingness to support the ticket if it could be turned upside down, voted for Fillmore, nominated as the candidate of the Native American party. Buchanan was elected President, and received the vote of New Jersey. Most of the Whigs who voted for Fillmore afterwards supported Lincoln, and thus became identified with the republican party; while a considerable number are now Democrats.

In the spring of 1857 Mr. Dayton was nominated by Governor Newell, and confirmed, attorney-general of the State, holding the office four years, and resigning it when appointed minister to France. This office had been recently put on the more respectable footing of a salary, and freed from the duty of prosecuting criminals in the counties, except when in cases of homicide, and other high crimes, he should be requested to do so by a justice of the supreme

court, and for this service to receive an extra compensation. The services of Mr. Dayton as attorney-general were highly appreciated by all who had any knowledge of them. He was especially distinguished in the prosecution of Donnelly for murder, the first year of his appointment.

The murder of Albert S. Moses by James P. Donnelly, at the "Sea-view House," a place of summer resort on the sea-shore, in the County of Monmouth, on the first day of August, 1857, was a remarkable crime; and the trial, conviction, subsequent proceedings, and final execution of the criminal were all of extraordinary interest. The accused was a young man of good education and prepossessing manners, who was employed as a clerk, and who had lost money by playing cards with Moses, a fellow-clerk, and stabbed him in his bed to get possession of the money, which had been placed by Moses in his bed, between the mattresses. The evidence of the criminal's guilt was entirely satisfactory, and the trial before Justice Vreddenburgh in the court of oyer and terminer resulted in a verdict of guilty.

No pains or expense were spared by the father and friends of Donnelly to prevent his conviction, and, after the verdict and judgment against him in the oyer, to obtain a reversal by means of writs of error to the supreme court, and from the judgment of that court to the court of errors and appeals, and finally by endeavoring to procure a pardon, all of which failed. The case is reported in 2d Dutcher, 463 and 601. Governor Pennington, J. P. Bradley, now one of the justices of the supreme court, and Joseph Warren Scott (his last appearance at the bar) were retained for the defense, and spared no pains to succeed. In the course

of the various proceedings many arguments of the questions raised, some of which were not only important, but new, took place, in all of which the attorney-general acquitted himself entirely to the satisfaction of those who heard him. His eloquence on the trial before the jury has always been spoken of as in the highest degree impressive and convincing; and his arguments before the courts were dignified, able, and successful.

When the party opposed to the administration of Mr. Buchanan had succeeded in electing a majority of the members of the legislature in the fall of 1858, and it fell to them to elect a senator, it was expected by many that Mr. Dayton would be the man; but he publicly declined the appointment.

When Lincoln was nominated for the presidency in 1860, instead of Mr. Seward, who seemed to be then the choice of the more advanced Republicans, the greater part of the Fillmore men in New Jersey joined in his support, and Mr. Dayton heartily co-operated with them. Upon the election of Lincoln, his friends thought him fairly entitled to a seat in his cabinet, and I have been furnished with the particulars of an interview with the President by Judge Nixon, one of the parties to it, which I give without alteration.

“It was well known in Washington that President Lincoln entertained a high opinion of the character, abilities, and public services of Mr. Dayton, and that if he had been permitted to exercise his own judgment, he would have given him a prominent position in his cabinet. A day or two after the abrupt entrance of the President elect into Washington, in the month of February, 1861, the republican delegation

in Congress from New Jersey had, by appointment, a formal interview with him at his rooms in Willard's Hotel, to urge upon him a suitable recognition of Mr. Dayton in the formation of his cabinet. Senator Ten Eyck was made the spokesman of the delegation, and he opened the subject with a somewhat elaborate statement of the worth, talents, and party claims of the distinguished Jerseyman. Mr. Lincoln's reply was prompt and characteristically candid. 'It is not necessary,' he said, 'to speak to me in praise of Mr. Dayton; I have known him since we served in the different houses of Congress, at the same time, and there is no public man for whose character I have a higher admiration. When the telegraphic wires brought to Springfield the news of my election, my first thought was, that I would have him associated with me in council, and would make him secretary of state. But New York is a great State, and Mr. Seward has many friends, and I was compelled by the pressure upon me to give up the thought. I then desired to arrange for him some other cabinet position, commensurate with his abilities; but Pennsylvania—another great State, you know—was bound to have a place for Mr. Cameron, and I again reluctantly yielded. I then said to myself, Mr. Dayton deserves the best place abroad, and I will send him to the court of St. James. But New England pressed her claims for notice, and united upon Mr. Adams, and I was driven from that purpose. I then thought of the French mission, and wondered if that would not suit him. I have put my foot down now, and will not be moved. I shall offer that place to Mr. Dayton, and hope it will prove satisfactory to him and his friends.'

"The interview here ended, and although it was generally understood that the President was surrounded by influences hostile to Mr. Dayton, and jealous of his recognition and advancement, yet he adhered to his resolution, and offered to him the mission to France, which, after some hesitation, he accepted."

Among those not in favor of the appointment of Mr. Dayton, it was well understood, must be reckoned Mr. Seward, the secretary of state.

Notwithstanding his ignorance of the French language, which to many seemed a great objection, I doubt if a better man for the place could have been found in the country. The manner in which he fulfilled the difficult duty unexpectedly devolved upon him, proved his peculiar fitness for it. Under ordinary circumstances, our ministers in foreign courts are simply conveniences for such of our citizens as travel or reside abroad, and require only to be polished gentlemen, acceptable to those in power, and ready to serve as a sort of heralds to those who call upon them, to introduce them, or to aid them in prosecuting their business. But it was far different at a time when it was certain that our country was about to be involved in a great civil war, in the conducting of which there was every reason to believe those who had arrayed themselves against the government would leave no means untried to obtain countenance, if not direct aid, from the governments of France and England, believed to be quite willing to see us divided.

Mr. Dayton was not only unable to speak French, but he was without the slightest experience of the customary etiquette of an ambassador, or of the habits of an imperial court. But so far from these seeming deficiencies being impediments, there is much

reason to believe, that by leaving his good sense, straightforward honesty, and ready tact untrammeled by devotion to mere forms, they were made to be aids rather than hindrances in the work he had to perform. One of the first questions he had to decide upon his arrival in France was, whether he would accede to the urgent request of one of our old diplomatic agents abroad, to wear a plain citizen's dress, and reject the court dress, known to be especially desired by the Emperor's officers, if not by himself; this being a matter left to the discretion of the minister. His prompt answer to this request was "that he had not come to France to make a point with the government about buttons." He accordingly arrayed himself in the prescribed costume, and, probably for the first time in his life, wore a sword, and so managed his deportment and his presentation address as to make a most favorable impression on the Emperor and Empress, and the whole court; although he was accustomed afterwards (as I learned from Mr. Dudley) to amuse his friends by a ludicrous account of his difficulties in managing the unaccustomed weapon, especially when required to retire from the imperial presence.

In one of his dispatches to the secretary of state, written about a year after his mission commenced, he writes: "I feel much gratified with the full satisfaction which you, in your own behalf and in behalf of the President, have expressed with my conduct in this mission. Certainly if I have in any respect failed, it has not been for want of proper attention and care. Indeed I am not now aware that anything could have been done here usefully, which has not been done. There is a certain class of people who seem to

think diplomacy consists in mousing out and reporting small matters, having really no kind of weight in settling international relations. I have not troubled you with these things, and I am glad of it."

Wholly regardless of the daily tittle-tattle of Paris, he bent his efforts to induce the French government to withdraw their recognition of belligerent rights in the Southern Confederacy or at least to remain neutral. Although obliged to converse with M. Thouvenel, the minister of foreign affairs, through the medium of an interpreter, he secured his good-will and full confidence. When he was superseded by M. Drouin de l'Huys, in the fall of 1862, he writes:—

"I regret the retirement of M. Thouvenel from the foreign department. We lose a friend at an important point. What may be the views of Monsieur Drouin de l'Huys, respecting our affairs I do not know. He is a gentleman of the highest character, and is universally recognized as one of the ablest statesmen of France. I should add that he has served as minister of France in England, is well known to the statesmen of that country, and speaks the language with ease and fluency. I have the pleasure of an acquaintance with him, and have no doubt that our personal relations will be entirely agreeable. His perfect knowledge of our language will, to a certain extent, facilitate our official intercourse."

Some extracts from a dispatch to Mr. Seward dated March 25, 1862, will afford some means of judging what influences he had to contend with. The Emperor, it will be remembered, spoke English.

"The Emperor, without application on my part, by a note from his chamberlain, signified to me that he would receive me to-day. Of course I availed myself of the opportunity, and have just returned from this personal interview. I was most kindly received, and he said at once that he had wished to have a talk with me about cotton, and the prospect of opening our ports, etc., etc. I told him we honestly believed that if a proclamation by France and England, withdrawing belligerent rights from the insurrectionists, should be made, the insurrection would collapse at once; that it was the moral

support only which that concession had given them that had sustained them so far ; that they had always looked to it as a first step towards their final recognition as an independent power. If the concession were withdrawn, I believed, as an equivalent, the blockade would be raised at an early day. He said the concession of belligerent rights was made upon an understanding with England ; that some legal questions were involved in it originally, and that he would have to speak to M. Thouvenel about them. When the insurrection broke out, and this concession was made, he did not suppose the North would succeed ; that it was the general belief of statesmen in Europe that the two sections would never come together again. This belief, he intimated, was a principal reason why this concession of belligerent rights was then granted."

In this same conversation, the Emperor stated that petitions and memorials were being daily presented to him on the subject of a supply of cotton for the manufacturers, the suffering and destitution, in certain parts of France for want of it, being constantly on the increase. It was well known that the Confederate government had very large quantities of this material at its disposal, if the way could only be open to procure it. Indeed it was currently reported and believed, that overtures were made personally to the Duc de Persigny, one of Napoleon's ministers, and very influential with him, offering him many thousand bales if he could secure from the French government encouragement and aid for the South. And besides this desire for cotton, the entanglement of the Emperor with the Mexican project rendered him disposed to desire the disruption of our Union, since the success of the North would necessarily involve the necessity of recalling the French troops.

Paris was the head-quarters of the southern agents and their friends. Slidell made it his permanent residence, and established influential connections there ;

Mason was a frequent visitor; and the city swarmed with Southerners and their families. Every effort that ingenuity and skill could devise, was of course made to induce the government to recognize the Confederation; and when it is understood that the English government was more than once prepared to do that if France would concur, the constant demand on the vigilance of the American minister may be understood. This vigilance never relaxed; but it showed itself only in a calm and deliberate use of reason and common sense. I have been informed by one of his family, that during the whole time, although he had previously known Mr. Slidell, they were never face to face, in private or in public. If the Emperor saw Slidell, it was privately and secretly.

A great service which he rendered was the preventing, by urgent remonstrances, of the carrying into effect contracts entered into by the Confederates with French shipbuilders, to construct and furnish six vessels, two of which at least were to be iron-clad rams, and the others privateers. This was accomplished with great difficulty, but the government yielded to his demands. Had these vessels escaped, as did the *Alabama*, not a vestige of our commerce could have remained on the sea. And when the *Alabama* entered the harbor of Cherbourg, he immediately notified Captain Winslow, in command of the *Kearsarge*, to cruise in the Channel, and by his earnest protests and his influence, induced the French government to order the *Alabama* to leave as soon as she had made the necessary repairs, and had procured coals and provisions. This order Captain Semmes found himself obliged to respect, and in doing so, and not to seek a fool-hardy combat, it is believed, met

the destruction of his ship, which was sunk after an hour's fight.

A letter kindly addressed to me by Thomas H. Dudley, our efficient consul at Liverpool, a life-long friend, who was a short time, during Mr. Dayton's first year in Paris, the vice-consul there, and had afterwards the best opportunities of knowing the true state of affairs, enables us to appreciate the character of Mr. Dayton, and to understand the extent of the influence he was enabled to exert. He says:—

"I only saw him occasionally. When with him, he was in the habit of speaking very fully with me about himself and about public affairs, and especially matters relating to his own legation. I always understood from him that the English government made two distinct and direct proposals to the French government to recognize the Confederacy. He told me this at the time, and I have no doubt about its being correct.

"I was informed by many persons, and from different sources, that the Emperor not merely entertained the highest respect and regard for Mr. Dayton, but that he was in the habit of making this remark to those about him whenever he was perplexed or in doubt about what was taking place: 'Go to Mr. Dayton and you will be sure to get the truth from him; I can always depend upon what he tells me.'

"I am also aware of the fact that Mr. Dayton was not only depended upon by our representatives abroad, but that they were in the habit of advising with him about all public matters. He seemed to be a nucleus around whom they gathered. We certainly never had a representative of our government in Europe who conducted the office with more ability and dignity, and who commanded more respect and esteem."

Mr. Dayton died quite suddenly at Paris, from an attack of apoplexy, December 1, 1864; before the surrender of the Confederate armies, but not until the overthrow of the rebellion had become apparent, and after he had brought to a satisfactory termination all the questions discussed between the governments of

the United States and France, and had succeeded in preventing the Confederate agents from procuring vessels of war to be built at Bordeaux and Nantes. Funeral services were held in the American chapel, at which, besides the usual religious exercises, and a sermon by the pastor, Rev. Mr. Sunderland, Mr. Bigelow, the American consul, and subsequently our minister to France, delivered a short address, expressing his great regard for Mr. Dayton, and his sorrow for his death.

Among other very appropriate remarks he said :—

“ Measured by its years, his life seems to have been brought to a premature close. But measured by its results, Mr. Dayton was an old man. At the early age of thirty-five, as we have already been told by our pastor, and when most men are content to begin their public career, he was already clothed with the highest legislative honors of the Republic. After an almost uninterrupted term of honorable service of twenty-two years, death overtook him in the discharge of what, under existing circumstances, deserved, perhaps, to be regarded as the most dignified political trust, save one, which his country could confer. Men have lived more years, some have achieved greater distinctions ; but what man was ever born with an ambition so extravagant that, looking back from the end of the longest life upon such results, would not feel that, so far as public honors are a test, he had filled the measure of his own, as well as of his country’s utmost expectations ? ”

Professor Laboulaye, of the French Institute, followed with some equally striking remarks in French. He said :—

“ Il sut maintenir les relations des deux pays, sur le meilleur pied, à des conditions égales, c'est à dire, également honorables pour les deux pays. C'est la un service rendu à la France, non moins qu'à l'Amérique et qui gardera dans l'avenir le nom de M. Dayton.”

EDWARD W. WHELPLEY was one of the justices of the supreme court two years and four months, and

chief justice a little more than three years. He was born in 1818, and was the son of Dr. William Whelpley, of Morristown, a physician of talent and high repute, and his mother was a Miss Dodd, of a family which, for several generations, were remarkable for mathematical taste and talent. His father died when he was ten years old. After the usual preparatory schooling at Morristown, in a school at one time taught by his grandfather, he entered Princeton College, and graduated in 1834, before he had attained the age of seventeen. Afterwards he taught a school about two years, and then entered the office of his uncle Amzi Dodd, at Newark, completing his studies with Amzi Armstrong. He was licensed as an attorney in 1839, and as a counselor in 1842. After a short residence as an attorney in Newark, he removed to Morristown, where he married, and resided during his life, and became a partner in business with Jacob W. Miller, who, having been elected to the senate of the United States, soon left the burden of his business to Whelpley. In 1847 he was elected a member of the legislature, and again in 1848, and was this year speaker of the Assembly.

Until I became myself a judge in 1852, I knew but little of his standing. I then found him having a leading position as an advocate. His arguments at the bar of the supreme court, and in the court of errors were fine specimens of legal learning and acumen; and sometimes, when on the wrong side, not a little perplexing. In the case of *Den vs. Young*, reported in 3 Zab. 478, and 4 Zab. 775, he persuaded five out of the six special judges of the court of errors, neither of whom were educated lawyers, to reverse the decision of judges learned in the law, upon

a question involving the law of real estate ; this being, I believe, the only case which has occurred wherein those judges have so ventured to decide, without the countenance of even a single legally educated judge. It was, however, a case where, to a common mind, justice seemed to be best administered by this final decision ; and thus the very object intended to be obtained by the constitution of a court with so many judges without legal learning, namely, that the supposed real equity should prevail against merely technical difficulties, was effected. The argument that prevailed, however, as will appear by an examination of the opinions delivered, was of itself, although unsound, perfectly technical ; and was the best the case admitted. It was in fact drawn up, at the request of the judge, in conformity with the ascertained wishes of a majority, by the counsel himself ; and fortunately no settled principles of law were so much interfered with as to make a dangerous precedent ; which, I am afraid, is more than can be said for some other decisions of the same court, which had the concurrence of one or more learned judges.

I may take this opportunity of stating, in regard to the court of errors, unfortunately as I think it is constituted,— for if there were no other objections, it is too numerous,— that after an experience of nearly fifteen years as a member of it there has been no time when there was any reason to question its entire integrity. It cannot be said of any tribunal ever constituted on the earth, that the judges were entirely free from the bias of prepossessions or of party or personal prejudices ; but I can with truth say that I have never seen reason to believe that any case was decided through any corrupt motive. Merely party

prejudices have seldom been in the least degree perceptible. Chief Justice Marshall did show much party feeling in the case of *Marbury vs. Madison*, and in some other cases; and Chief Justice Taney showed a similar bias in the *Dred Scott* case; but they were both excellent men and able judges. In regard to the latter, I may state that Mr. Southard, who was much prejudiced against him by his course in reference to the removal of the deposits from the Bank of the United States, and who certainly was a very competent judge, said to me after he had read his opinion in the case of *Bank of Augusta vs. Earle*, 13 Pet. R. 586, that he withdrew his objections to this appointment, and was satisfied that he was a fit successor of Marshall. And I think no fair minded lawyer can carefully read his dissenting opinion in the case of *Taylor vs. Caryl*, 20 How. R. 600, without perceiving that he was a most able judge, and retained his faculties, even after he had passed his eightieth year.

Martin Ryerson, who had been appointed justice of the supreme court in 1865, was compelled by ill health to resign in 1868, and Mr. Whelpley was selected by Governor Newell to succeed him. Up to 1855, the supreme court had consisted of five justices; but in this year an act was passed adding two more, constituting seven judicial districts, and providing that the justice assigned to a district should be *ex officio* president judge of the courts of common pleas, general quarter sessions of the peace, and orphans' courts, held in said district. The understanding was, that one Democrat and one Whig would be appointed, and accordingly Governor Price appointed Ryerson, a Democrat, and Peter Vredenburgh, a Whig,

both of whom are still living, the latter having held the office fourteen years.

The great object of this change in the judiciary system of the State undoubtedly was, to bring the important business transacted in the inferior courts under the control of a judge well instructed in the law. It has been a most beneficial change, especially where the justice of the supreme court presides, not only in the orphans' court, but in the court hearing appeals from the court for the trial of small causes.

When Chief Justice Green was appointed chancellor in 1861, Whelpley was appointed to succeed him; and it may be remarked that every chief justice of the supreme court, since the death of Kinsey, has been a graduate of Princeton, except Hornblower, and all have been Presbyterians, except Chief Justice Beasley. It cannot be said that Whelpley was in all respects equal to his predecessor; but he was an able lawyer, of sound judgment, and, had his life been spared, he bid fair to earn a high reputation. He was thoroughly grounded in the doctrines of the common law, and in the case of *Adams vs. Ross*, 1 Vroom, 507, took great satisfaction in reaffirming the ancient and well established principle, that the word heirs is essential in a deed, to create an estate in fee simple or fee tail, and that no circumlocution from which the intention to do so might be inferred is sufficient, the good and sufficient reason being to avoid uncertainty, the mother of contention and confusion,—a departure from which principle in the construction of wills has opened so wide a door for constant dispute and uncertainty.

His death occurred early in 1864, after more than a year's decay and suffering under that insidious

malady known as "Bright's disease." The previous death of a much loved child, had deeply affected him, and was apparently made the means of reviving the religious impressions of his youth, and of leading him to a serious consideration of his condition as a sinner, and to an open profession of his faith in Christ as an all sufficient Saviour.

He was not only a well read and able lawyer, but was fond of general literature, and a genial and very agreeable companion; and he died at the early age of forty-six, greatly respected and deeply lamented, not only by his associates of the bench and bar, but by the community among whom he had lived.

GEORGE H. BROWN was a justice of the supreme court about four years and a half. He was the son of Rev. Dr. Isaac V. Brown, long at the head of a classical academy at Laurenceville, and was born in the year 1810. After a preparatory training in his father's school, he entered Princeton College and graduated with honor in 1828. He then assisted his father as a tutor for a year or two before entering upon the study of law.

His clerkship as a law student was in the office of Thomas A. Hartwell, at Somerville; but his principal legal education was obtained at the law school of New Haven. He was licensed as an attorney in 1835, and as a counselor in 1838. He took up his residence and married in Somerville, and continued to reside there until his death. He soon had a very good reputation as a lawyer, and, for the place, a good business; laborious enough, but never very lucrative. I had no personal intercourse with him, and therefore very little knowledge of his capacity, until

I sat on the bench. In argument before the court, he always showed himself fully master of the questions involved, and in fact an able lawyer.

He was a member of the convention that framed the new constitution in 1844, and took an active part in the discussions that took place in that body. Upon the adoption of that instrument, he was elected the first senator from the County of Somerset, as a Whig, although the county usually gave a majority the other way. In 1850 he was elected a member of Congress; but at the election in 1852, the district having been in the mean time changed, he was defeated.

When Whelpley was appointed chief justice, in 1861, he was nominated by Governor Olden a justice of the supreme court in his place, and confirmed by the senate. He made a very satisfactory judge, and was a very agreeable associate. But disease soon interfered very seriously with the performance of his judicial duties, insomuch that he would have resigned much sooner than he did, had not his friends, especially those on the bench with him, urged him to continue so long as there was any reasonable hope of recovery. But an insidious internal affection of some of his organs baffled all the efforts of medical skill, and terminated his life in 1865.

His protracted illness, with the blessing of God, was made the means of leading him back to the early lessons of pious parents, so that some time before his death he gave good evidence of true penitence and faith in Christ.

CHAPTER XIV.

LAWYERS I HAVE KNOWN.

SAMUEL LEAKE. JAMES GILES. RICHARD STOCKTON. LUCIUS H. STOCKTON. GEORGE WOOD. GARRET D. WALL. WILLIAM W. MILLER. JACOB W. MILLER.

SEVERAL of the men eminent in the profession, at the commencement of the present century, had died or retired from active business before I was myself called to the bar. Among these were Thomas P. Johnson, Andrew Hunter, Aaron D. Woodruff, and Samuel Leake. I have more than once heard Judge Washington say that the bar of New Jersey was not excelled in eloquence or learning by any in the Union. This was high praise, coming from so competent a judge, and one who took such pride in those of the profession, from the bar of Philadelphia, who attended the supreme court at Washington, as to say of them familiarly, when they entered the court, as a stage load of them in company sometimes did, "This is my bar."

SAMUEL LEAKE was still living when I was admitted to the bar, and sometimes appeared in the supreme court, although he had retired from active business. He was born in Cumberland County in 1748, and graduated at Princeton in 1774, having previously taught a school at Newcastle. He was licensed as an attorney in 1776, and afterwards was a counselor

and sergeant. He settled first at Salem, but removed to Trenton in 1785, where he resided until his death in 1820.

He had during several years a very large practice, was a strictly honest lawyer, and an earnest, sincere Christian, belonging to the Presbyterian Church. His great simplicity of character and minute exactness, even in the most trifling matters, made him the subject of many stories. Richard Stockton spoke of him as a learned lawyer, but as not possessed of much real talent. It was reported that upon one occasion, when opposed at the bar, Stockton referred to his having been a school-master, when he retorted, with his high-toned voice, "The difference between the gentleman and myself, I suppose, is, that if he had ever been a school-master, he would be a school-master yet."

One of the lawyers first known to me at Bridgeton, the place of my life-time residence, was JAMES GILES. He was born in New York in the year 1759. His parents were from England, and do not appear to have had any relatives in this country. When he was still an infant, his father returned to the mother country, to be ordained as a minister of the Episcopal Church. On his return, the vessel in which he came was wrecked in a violent snow-storm, at the entrance of Delaware Bay, and he perished. His body was said to have been buried in an old graveyard, at New England Town, in Cape May County, now nearly or quite washed away by the encroachment of the bay; but his son was never able to identify the exact situation of the grave.

At an early period of the Revolutionary War he was appointed a lieutenant in the second, or New York

regiment of artillery, and continued in service until 1782, in which year he became a student at law with Joseph Bloomfield, then resident at Trenton. In 1780 he was attached to the command of Lafayette, and served under him in Virginia, being one of the officers who received from him a sword brought from France, which is now in the possession of the Historical Society of New Jersey. When his old commander visited this country in 1824, this sword was handsomely remounted, and worn when he was received by the Society of Cincinnati of this State, of which Giles was a member. It was said at the time that the general received him with great cordiality, and immediately recognized him and called him by name. He was for several years general of the Cumberland brigade of militia, and was generally addressed as General Giles.

In 1783 he was licensed as an attorney, and in due time as a counselor, and in 1804 was made a sergeant at law. Shortly after he was licensed he married the sister of General Bloomfield, and took up his residence in his native city, and was admitted to the bar there. In the first directory of that city, published in 1786, in the list of lawyers, is found the name of James Giles, Esq., 65 Maiden Lane.

In 1788 he came with his family to Bridgeton, where he resided during the remainder of his life. In the ensuing year he was appointed by the legislature, in joint meeting, clerk of the county; and being twice reappointed, he held that office fifteen years. Being at that time entitled also to practice law, he had quite a large, and, for that day, lucrative business. In 1793 he built for his own occupation a good house, which for many years was, with its or-

namental grounds and furniture, the best residence in the place; and he accumulated the largest library, both of law and miscellaneous books, in South Jersey.

He was a well-read lawyer and safe counselor; but it cannot be said that he was distinguished as an advocate. He was a small man, precise in his dress, and remarkably erect and graceful, but very slow in his movements, and in all he did. At the circuits he was one of the most genial and delightful companions. The legal documents he drew were marked by great neatness and precision. About 1805 his friends confidently expected he would be elected one of the justices of the supreme court, although a majority of the joint meeting was politically opposed to him; but the result was that the law authorizing three associate justices was repealed.

I recur with mournful pleasure to the memory of this gentleman, because he was kind and friendly to me in spite of old political differences with my father, with whom, however, for some years after the war, his relations were such as fellow-soldiers generally maintain. His friendly countenance and encouragement were valuable to me when, a young practitioner, I first engaged in the conflicts of a profession sometimes very trying to a beginner. He had a large family of children, most of whom died young. James G. Hampton, educated for the bar, who graduated at Princeton in 1835, and represented the first district in Congress two terms, and who died in 1863, was a grandson. Now all have passed away; not a single individual of kin to General Giles, and only remote kindred on the side of Mrs. Giles, remain in the State; and it is scarce remembered that such a man ever lived. His name will be found a few times as counsel

in the early reports; but his business was nearly all confined to the counties of Cumberland and Cape May. A beautiful daughter, who married a Mr. Inskip of Philadelphia, of the firm of Bradford & Inskip, booksellers, removed many years ago to New Orleans, and had several daughters, who inherited some of their mother's beauty, whose descendants are still living there, and occupy respectable positions in society. General Giles died in 1825. During the latter years of his life he held the situation of president of the Cumberland Bank.

This reminiscence of an old friend, who died forty-five years ago, recalls the political conflicts of my boyhood and youth. They are still much more violent than they ought to be; but they were then much more fierce and unreasonable. When a small boy at school, and one of the only two boys belonging to republican families, I was obliged to fight more than one battle over a colored hat, bought for me without reference to polities, but which the federal boys who wore the black cockade stigmatized as French. A quarrel having broken out, in the recess of school, between one of General Giles's daughters, of my own age, with a boy who was her cousin, afterwards a lawyer and long since dead, by way of applying the most opprobrious epithet she could think of, she called him a Democrat. This roused his anger so that he struck her, and as I was present and aspired to be her champion, a battle ensued between us, the victory in which, like many more serious conflicts, was claimed by both parties. When the fourth of March, 1801, came, a day I well remember, the Republicans had their triumph; we sported a cockade of red and blue, and mustered strong enough to drive off every federal

boy that showed his face on the ground where the rejoicing was held. The conflict was continued, as is well known, for nearly twenty years, when, disheartened by repeated defeats, the Federalists surrendered at discretion ; and I look back with much satisfaction to the fact that I was glad to coöperate with them in forgetting old disputes and inaugurating that era of good feeling which prevailed until the success of the Jackson party renewed the strife of earlier days. During several years, an old Federalist who aspired to public office was generally disposed to ignore his previous party relations.

An amusing incident, occurring about the year 1825, in the life of that eminent lawyer and patriot, James L. Petigru, of Charleston,—

“ Faithful found ;
Among the faithless, faithful only he,” —

whose acquaintance I had the pleasure of making a few years before his death, shows the extent of the feeling. A man whom he had offended lavished on him all the foul epithets and appellations he could remember or invent. The assaulted party stood unmoved, with half a smile of amusement on his face. At last the bully bethought himself of a term of reproach, which, at that day, comprised everything hateful. He called him a “damned Federal.” The words were no sooner uttered than a blow, altogether unexpected by the brawler, laid him in the sand. Being asked why he thought it a greater offense to be called a Federalist than to be called a rogue or rascal, Petigru replied, “I incur no injury from being abused as a rogue, for nobody believes the charge ; but I may be thought a Federalist readily enough, and be proscribed accordingly, and so I knocked

him down, by way of protest against all current misconstructions."

RICHARD STOCKTON stood confessedly at the head of the bar, during my acquaintance with him, from 1818 until his death in 1828, when not quite sixty-four years old. His friendship and patronage during that time, I regard as having been of essential service to me, and more valuable than that of any other member of the bar, excepting only Mr. Frelinghuysen, whose faithfulness as a Christian greatly enhanced his other claims to regard; and they were more highly appreciated, because I had no claims upon either of them from family or political connections. In the providence of God, I was quite intimately associated with them not only as members of the bar they adorned, but as joint commissioners on the part of this State, for the settlement of the dispute with New York respecting the waters dividing the two States. One of the marked traits in the character of Mr. Stockton, was the pleasure it evidently gave him to assist young members of the profession, by all suitable advice and encouragement. I found him disposed to be reticent in only one thing, and that I suppose grew out of his professional habits. When associated with me in the trial or argument of a cause, as he was in a few important cases, he would gather what he could from me, but did not seem disposed to aid me with suggestions as to the grounds upon which the case should be presented, but left me to prepare my own argument as best I could. His habit was to carefully study a case and make a very full brief; and he assigned as a reason for doing so, that he was often obliged to argue the case a second

or third time, on motions for a new trial or in error, and he was by being well prepared at the start saved much labor. He was a well-read lawyer, and a diligent student, fond of the black letter, and would sometimes remark that an authority read from a heavy folio was entitled to more weight than one from a modern duodecimo. But he fully appreciated the service that Blackstone had done for the profession, and was for many years, as I have heard him say, in the habit of reading the most important parts of his *Commentaries*, especially the second volume, once in every year. And he kept fully abreast of all the changes in the law.

He belonged to one of the ancient families of the State, who from its early settlement were prominent. His father, named also Richard Stockton, was an accomplished and eloquent lawyer, one of the justices of the supreme court before the Revolution, and a signer of the Declaration of Independence; and his mother was a Boudinot, an accomplished woman of highly cultivated mind and literary taste.¹ After having graduated at Princeton, before he was seventeen years old, he studied law at Newark, with his uncle Elisha Boudinot, afterwards one of the justices of the supreme court. He was licensed as an attorney in 1784, when only about twenty years old, afterwards as a counselor, and in 1792 was made a sergeant at law. He took up his residence on the paternal estate at Princeton, where he raised his family and resided during life. Although considered at first rather dull, as his powers matured he rose rapidly in his profession, and in a few years ranked among the highest.

¹ See Field's *Provincial Courts*, 190.

A slight examination of the supreme court reports will show that from the time they commence until his death, no lawyer, except perhaps Mr. Leake, was more generally employed. His manner of speaking was usually dignified and unimpassioned ; but he was capable of splendid declamation and the most crushing sarcasm and scorn, and when provoked he sometimes indulged in them. He was, during his time, almost the only lawyer of the State who argued causes before the supreme court at Washington, and these were cases not originating in New Jersey. When Mr. Webster took occasion to speak of lawyers of eminent talents, in answer to a fling of Mr. Binney, in his argument of the Girard will case, to which I listened, he enumerated among them Mr. Stockton, as well as Mr. Jones of Washington, who had been attacked. He is no exception to the remark of Mr. Duponceau, that "lawyers leave nothing behind but the echo of a name." There are few remains of his learning or his eloquence. He was very little in the habit of writing for the newspapers or otherwise. The argument in favor of the New Jersey claims to the waters of the Hudson, appended to the report of the commissioners, published by order of the legislature in 1828, is the only document in print from his pen of which I have any knowledge. It will be found to be a very able discussion, considering that he had to advocate a very doubtful claim ; but it is rather a lawyer's brief than a carefully prepared essay. Of his eloquent addresses to juries, which were often considered almost unequaled, there are no reports.

In 1796 he was chosen by the joint meeting to a vacaney in the senate of the United States, and sat

in that body until 1799. Being a very decided Federalist of the Hamilton school, when that party became the minority in the State, as it was during most of his life after 1800, he of course shared their fate in being excluded from official position. Upon the declaration of war against Great Britain, when the opposition obtained a temporary majority in the State, and provided for the election of members of Congress by districts, he was elected in January, 1813, a member of the thirteenth Congress.

He took a leading part among the able men then in the house of representatives, including Webster, Calhoun, and Clay, the three most distinguished statesmen of the nation, although all failed to reach its highest position. One of his speeches, delivered January 14, 1814, imperfectly reported in the "National Intelligencer," produced a strong impression in the house, and distinguished him as a powerful orator dangerous to attack. It was delivered in answer to some remarks, pointed especially at him, made by Charles J. Ingersoll, of Philadelphia, who although as a youth known and received by Mr. Stockton as a warm Federalist, had now taken the side of the administration. For keen retort and powerful invective, this speech has seldom been excelled, and the tradition is that it completely humbled his assailant, even to drawing tears from his eyes. He probably had not intended to be personally offensive, but did not make sufficient allowance for the sensitive pride of his father's old friend. He promptly disclaimed all intention to be personally disrespectful, avowed his own change of polities, and acknowledged the private worth, the high character, and the professional eminence of the member from New Jersey, declaring

him to be, "in all respects, except his politics, unexceptionable."

Once, at the bar of the supreme court, I heard him address Chief Justice Kirkpatrick in language and with a manner no one else at the bar would have dared to imitate. He did not like the chief justice very much, partly because he regarded him as a deserter from the federal party, an offense not easy for him to forgive. We youngsters used to say the chief was afraid of him. When in the case of *Gibbons vs. Ogden*, reported in 1 Halsted R. 300, the chief justice read his opinion, in which he stated he thought the law was with the defendant, but concluded by saying, "yet from a real diffidence in my own judgment upon this question, especially when set in opposition to that of the chancellor, and from a full persuasion that it will be better for both parties to let the judgment be entered for the plaintiff here, and the case be carried up by appeal, to a superior judicatory, to which great constitutional questions of this kind ultimately belong, I have thought it best upon the whole to say the demurrer to the plaintiff's declaration must be overruled." Mr. Stockton immediately arose and asked the court, with an air not a little sarcastic, whether, as it appeared a majority of that court was in favor of his client, he should enter the judgment in accordance with that opinion, or in accordance with the opinion of the judge of another court. To this the chief justice of course replied, that he had stated very plainly what judgment was to be entered.

He was from 1791 one of the trustees of Princeton College, taking always a lively interest in the concerns of that institution. The honorary degree of

LL. D. was conferred on him by Rutger's and Union colleges, and no doubt would have been by his *Alma Mater*, had it not been that the invariable usage of the board is to decline voting honorary distinctions to one of their own number.

Mr. Stockton was a large man, but of the most imposing personal appearance and captivating address. Among the junior members of the bar, he was generally spoken of as "the old duke." No other man has come under my observation, to whom such a title could be so appropriately applied. He was a noble man, in the true sense of that epithet. While he was entirely free from any assumption of personal importance, his whole deportment and demeanor were those of a man of the highest distinction. Perfectly affable in his manners, and easy of access to those who enjoyed his friendship, there was something about him which led all who approached him to show him respect. And those best acquainted and most intimate with him respected him most.

When Judge Pennington died in 1826, it was expected by the friends of Mr. Stockton that the situation of judge of the United States district court would be conferred on him. His superior qualifications and willingness to accept it were well known to President John Quincy Adams and Mr. Southard, then in his cabinet. But other influences prevailed. The political prospects of the administration were known to be rather doubtful, and to appoint so pronounced a Federalist to office was no doubt considered unadvisable.

Mr. Stockton peremptorily declined allowing his friends to take any steps to secure his appointment. He said to me and to others, that although it would

be very agreeable to him to retire from the toils of the profession, and that the moderate salary annexed to the office, joined to his private fortune, would enable him to continue the style of living to which he had been accustomed; yet he would not solicit the office; if it was conferred on him, it must be because the President and his advisers thought him the fit man. Unfortunately mere fitness for the office was not then, and has seldom ever been, the principal reason for an appointment. I confess I was a good deal grieved that Mr. Southard did not, on this occasion, rise above mere party expediency. A letter to me from him, dated November 26, 1826, remarks: "You are all, I mean my friends in New Jersey whom intimacy justifies me in looking to for advice, very cossive, as southern politicians say, about the district judgeship. Not one word can I get from those I ask. Now take notice, after the decision is made, I hold you all responsible for it, and bound to justify it; you have no right to keep dark, and after I get into difficulty, abuse me for my blindness" He knew perfectly well, however, what keeping dark, as he called it, meant in my case, and I suppose in others. No other member of the bar has since held quite the same position as did Richard Stockton. The late Commodore Robert F. Stockton was his son.

LUCIUS HORATIO STOCKTON, known to his associates as Horace Stockton, was a younger brother of Richard, and in early life was thought to be quite equal if not superior to him in talent. He graduated at Princeton in 1787, was licensed in 1791, and died in 1835. But a disposition to eccentricity was soon exhibited, and so increased as in a great measure to de-

stroy his usefulness. He resided in Trenton, and at one time was in good business, especially in the southern counties. I used to hear in my youth of a case before the Cumberland quarter sessions, in which he was one of the counsel, that was much talked about.

In the year 1793, and while the yellow fever prevailed in Philadelphia so fatally, a man who was confined in the jail at Bridgeton for a small debt, sickened with the disease, to the great alarm of the inhabitants. My uncle, Jonathan Elmer, who had been a member of Congress during the Revolution, and one of the first senators under the new Constitution, and who, although educated as a physician, was also a well read lawyer, was the presiding judge of the county court, and following the example of the judges at the time of the great plague in London, he ordered the man to be removed to the house of his mother, where he died. The creditor sued the sheriff for an escape, and obtained a judgment against him before a justice. There was an appeal to the sessions. When the case came on for trial, the first effort of Mr. Stockton, as counsel for the creditor, was to prevent Judge Elmer from remaining on the bench; but he declined to withdraw, and in the course of the proceedings, protracted into the night, said something which Mr. Stockton deemed offensive, so that he demanded to know whether he spoke as a man or as a judge. To this the judge replied that he spoke both as a man and as a judge; and thereupon Mr. Stockton announced, with many expressions of deference to the court, that if he would come off from the bench and repeat his remark solely as a man, he would pull his nose as a man. He lost his cause for want of proper evidence of any valid judgment against the debtor.

Mr. Stockton was a warm politician, and accustomed to write in the newspapers of the day. Under the administration of the elder Adams, he held the office of United States attorney for this district; and towards the close of that administration was nominated as secretary of war, but was not confirmed. When I knew him he had declined in business and efficiency. A gleam of his old spirit, however, broke out upon one occasion before Judge Washington, who always treated him with great respect and forbearance. Upon the argument of his cause, as had come to be very much his practice, he cited case after case in support of the most familiar principles, until at last the judge remarked to him very pleasantly, "Mr. Stockton, you are shooting a dead duck." He said nothing at the time, but happening during the same term to have a case that involved a question of some nicety, he affected to consider that point as too plain to require argument; and when told by the judge that he wished to hear it discussed, he said, very meekly, "O, may it please your honor, I was afraid of being accused of shooting the dead duck."

GEORGE WOOD was probably the ablest man New Jersey has produced. He was born in Burlington County, graduated at Princeton in 1808, studied law with Richard Stockton, and was admitted to the bar in 1812, taking up his residence in New Brunswick. It was not long before he rivaled his master, to whom in some respects he was superior. His intellect was of the highest order, entitling him to rank with Mr. Webster. His power of analogical reasoning was very striking; the most difficult subject seemed to arrange itself in his mind in its true pro-

portions. He had the faculty attributed to Lord Mansfield, of so stating a question as to make the mere statement a sufficient argument. He generally spoke from mere short memoranda in pencil, and was so accurate in the use of language, that what he said would, when written down, prove entirely correct.

After a few years' practice at the bar of this State, he removed to New York, where he took rank among the leaders, and was the equal if not superior to the best of them. Until his death in 1860, he was engaged in the most important causes not only in New York, but in other States. He was among the few eminent lawyers of the country who held no office. Upon the death of Judge Thompson in 1845, he was strongly recommended to President Tyler, to take his place on the bench of the supreme court of the United States, and there can be no doubt he would have adorned the station. His political education was as a Federalist; but he was not addicted to polities, and never supported the republican party. Not long before his death, he spoke at a public meeting in New York, strongly in favor of maintaining the compromises of the Constitution, and thus obtained the honorable designation from some of the radical papers of "Union saver."

In my early practice, it was my fortune several times to encounter him at the bar, and a most formidable adversary he was. The last time I heard him was in the year 1855, when he appeared before the New Jersey court of appeals, in the case of Gifford *vs.* Thorn, reported in 1 Stock. 708. I have always thought his speech in that case, upon the whole, the ablest to which I ever listened. It com-

bined almost every kind of eloquence: in solid reasoning quite equal to that of his leading opponent, Charles O'Connor; in playful wit, in occasional appeals to the sympathy of the judges, and in impassioned declamation, quite superior.

GARRET DORSET WALL was the fourth child of James Wall, and was born in the township of Middletown, Monmouth County, New Jersey, in 1783. The first of the family who came over from England was Walter Wall, who, after living a short time in Massachusetts and in Long Island, settled in Monmouth County in the year 1657. James Wall was the fourth in descent from Walter, and married the daughter of John Dorset.

James Wall was an officer of the militia during the War of the Revolution, was engaged in the Battle of Monmouth, and received the sword of a British officer, whom he captured on that occasion. Upon his death in 1792, leaving a widow with six children in straitened circumstances, Garret, a boy of ten years old, was sent to reside with his uncle, Dr. John G. Wall, at Woodbridge, where he continued until the death of the Doctor in 1798. He was there associated with the late Judge Crane, who removed many years ago to Dayton, Ohio, and was several years a representative in Congress. He informed me, that although older than Garret, they were members for about two years of the same class in a good classical school, where most of the pupils were engaged in the ordinary English course; but a small class, including Crane and Wall, studied the Greek and Latin languages. They were afterwards members of Congress at the same time, and had the pleasure of re-

newing their old friendship, although taking opposite sides in politics.

The scanty store of learning obtained at Woodbridge was all that Wall's circumstances allowed him to acquire. In the spring of 1798, when in his fifteenth year, he commenced the study of the law at Trenton, in the office of General Jonathan Rhea, then clerk of the supreme court, one of whose daughters he afterwards married. He is said then to have been a tall, awkward boy, but giving promise of great cleverness ; and he rapidly improved in his personal appearance and manners. He became, indeed, remarkable for comeliness and an engaging and winning address. He studied pretty faithfully, and profited by his studies. He also performed much of the duties of the clerk's office, deriving his principal support from his services there. By diligent attention to the duties of the office, and by careful study, he made himself perfectly familiar with the practice of the court, and with the original sources from which it was derived ; so that his authority on all subjects connected with the practice was afterward confidently appealed to and relied on by the bar and the bench.

In the year 1804 he was licensed to be an attorney, in 1807 as a counselor, and in 1820 was called to be a sergeant at law. Soon after he was first licensed, he married and commenced practice in Trenton. In 1812 the federal party, to which he belonged, having obtained a temporary ascendancy in the State, he was elected by the joint meeting clerk of the supreme court, an office valuable to him from its considerable income, and as aiding to introduce him to business in his profession. Upon the expiration of his term in 1817, although the democratic party had then

the majority, it was well understood that he would have been reëlected but for the circumstance that one of his own party absolutely refused him his support, on the avowed ground that when the federal party had the majority, Wall, with that disinterested generosity which distinguished him through life, used his influence with success to retain in office the democratic treasurer, who was a personal friend, and at that time held in high esteem.

During his period of study, and after he came to the bar, although not a systematic student, he was a diligent reader, and fond of tracing legal principles to their original sources. As soon as his means permitted, he collected a large and valuable law and miscellaneous library, and made a good use of it. Far from being satisfied with mere abridgments and compends, like every lawyer who attains to even moderate eminence, he had recourse to the original black letter, and mastered the more abstruse as well as the more attractive portions of the law as a science. He was well grounded in the doctrines of the common law in relation to real estate, and fully able to unravel its most intricate subtleties. He read, also, and imbued his mind with the productions of the best authorities in the English language, and continued to do so to the close of his life.

But although his native powers were of the highest order, they were never subjected to that exact discipline necessary to their full exercise, and they developed themselves very slowly. He had at first great difficulty in expressing himself, was timid and distrustful of himself, and exhibited through life something approaching to an impediment in his speech. It was not until deprived of office that he took a high

place in his profession. That place, however, he did take, and maintained it until diverted by other pursuits. I have heard him say, that, give him William Griffith and Richard Stockton for his associates, he would not be afraid to meet any three lawyers that could be selected in the United States; and it was no idle boast. It would have been hard to match three such advocates, and harder still to beat them.

The immediate descendant of a revolutionary soldier, he partook himself largely of the military spirit. It was seen, so long as he retained his health, in his erect carriage, his measured step, his glowing eye, and in the very style of his dress; and hence the military title of general, with which we were so long accustomed to greet him, and which he derived from holding for a time the office of quartermaster-general of the State, was not, as in many instances, a title to which he seemed to have no proper claim, but one that naturally belonged to him, and which came to our lips spontaneously, as his rightful due.

During the War of 1812, he took command as captain of the *Phœnix* Company of uniformed militia, which had been first established during the Revolution, in which he had for some time held the post of lieutenant, and with them volunteered a tour of active service, as a part of the force detailed for the protection of New York. He earnestly advised Colonel Ogden to accept the appointment of major-general, and offered to resign his office, then yielding him a large income of which he had much need, and to take whatever place might be assigned to him in his military family.

It is not easy to exhibit the proofs of genius and capacity exhibited by a lawyer, while actively engaged

at the bar. In the words of Mr. Duponceau, himself an example of what he described, "The life of a lawyer in the full practice of his profession offers very little but the dismal round of attendance upon courts, hard studies at night, and in the day fatiguing exertions, which, however brilliant, are confined to a narrow theatre, and leave nothing behind but the echo of a name." One of the most important cases in which he was concerned, and which he argued with "great care and ability," was that of *Arnold vs. Munday*, in the first volume of Halsted's Reports. He was on the side that eventually failed, although subsequent study and reflection have satisfied me it would have been better had he succeeded.

The distinguishing characteristics of General Wall as an advocate were his quick sensibility, an intuitive insight into character and motives, and that ready tact which enabled him easily to recover from his own mistakes, and promptly to take advantage of those of his adversary. Although he had often a hesitating and confused manner of expressing himself, which in his early efforts was very discouraging, and which it cost him the most strenuous efforts to overcome; yet he not unfrequently rose to the highest eloquence. He scorned everything like trick and unfairness; but it cannot be denied that he often erred in being too willing to press an accidental or even unfair advantage, when on the side of his client, and to confuse a jury if possible by the intricacy of his statements.

These are errors to which lawyers are too prone. But he never adopted the extravagant and false doctrine gravely advanced by Lord Brougham in the English house of lords, that "to serve that client by

all expedient means, to protect that client at all hazards and cost to others, and amongst others to himself, is the highest and most unquestioned of his duties."

No lawyer, whatever examples to the contrary may have been set by those high in the profession, can safely imitate the course pursued by Mr. Phillips, a famous advocate for criminals in England, in the defense of the assassin Courvoisier (even although adopted, as that was said to have been, by the advice of the judge who tried the case), which exposed him to such severe, and to some extent to such just reproach. After the criminal had confessed to him his guilt, he attacked and endeavored to discredit witnesses he knew were telling the truth.

I was informed by the late Judge Potts, who was a student in General Wall's office, that he was remarkably candid with his clients, when they fairly disclosed their cases to him, and if he felt clear that they were wrong, did not hesitate to tell them so; but at the same time he was cautious not to decide against them, saying, with some humor, that lawyers might err as well as judges, and that it was hardly fair to make a client pass through two ordeals, with two chances to be beaten,—one by the error of his lawyer in prejudging his case, and the other by the error of the court or jury in not deciding it rightfully. When he had undertaken a case, he prepared it with great pains, and managed it with dexterity, being full of resources, and ready at expedients.

His mind dwelt very little on the details of his office business; his great fault, indeed, was that he had not the habit of steady application. He was kind and gentlemanly, never leaving his students without shak-

ing hands with them. The idea of distrusting any one seemed never to enter his head. When about to leave home, he would often say to a student, "Get my keys, and hunt up all the money you can find and deposit it in bank." The hunt had commonly first to be made for the keys, and then a longer hunt for the money, which would be found scattered in the drawers of his secretary or table, wherever he had happened to empty his pockets. He showed the generosity of his nature by the deep interest he took in his students after they left him, always using his influence in their favor when he could.

He was distinguished for his hospitality, carrying this virtue often to the extreme limits, and even beyond the bounds of prudence. His clients and his neighbors ran to him for all sorts of counsel, and at all times, convenient or inconvenient. For the advice thus sought, and always freely given, he seldom made any charge. But few lawyers ever did so much business without being adequately paid, and I may add but few ought to. If anybody got into trouble, the first man he would think of applying to for relief would be General Wall; and rarely did any one apply without getting what he asked for, if it was in his power to give it, and often when it was much to his injury. Faithful and self-sacrificing as a friend, he was placable as an enemy; and although sometimes violent in his resentments, he was always easily pacified, and had no memory for injuries.

The early training of General Wall was as a Federalist, and, like many of those with whom he associated, he was far from moderation in his opposition to the Republicans. But in process of time he changed his political relations and his views of men and meas-

ures. His own language, in a speech made in the senate, was: "My colleague (Mr. Southard) with some scorn speaks of modern democracy, and says that he went to bed one night a Democrat, and rose the next morning a Federalist. Sir, if such a sudden metamorphose took place, his democracy must have been composed of 'such stuff as dreams are made of; like shadows it came, and like shadows it departed.' My democracy, however modern it may be, neither came so suddenly, nor will it, I hope, be so evanescent. I admit that my democracy is a plant of slow growth; it neither came up in a night, nor will it be found withered in the morning. It resulted from reflection, experience, and the conquest over error and prejudice; and I hope that, like all plants of slow growth, it will be the more enduring. I have no pretension to that unctuous democracy which arises from hereditary descent. I cannot boast that 'I was born in the purple.' Hereditary democracy savors rather of aristocracy, and, like hereditary property, is apt to be dissipated."

In the year 1822 he was elected a member of the Assembly from the County of Hunterdon, running on a union ticket, and was the only one of that ticket who succeeded. I met him there as a fellow-member, and I well recollect the part he took in our proceedings. His frank and amiable manners made him a general favorite, while his intimate acquaintance with the common law, the statutes of the State, and the practice of the courts, enabled him to render essential service in the ordinary business of legislation. Political contests did not disturb us, and no very important questions arose for discussion. Upon one occasion, however, he spoke with great eloquence and effect.

Divorces were at that time granted by private acts, often for very insufficient reasons, without anything like a careful investigation of the alleged causes, and sometimes even without reasonable notice to the opposite party. After several such acts had passed against his vote, he was at length aroused to such an exposure of the injustice of the proceeding, and the danger of thus tampering with the dearest and most sacred relation of life, as for a time to arrest the practice.

He was one of the earliest supporters of General Jackson for the presidency. I remember that early in the fall of 1824 I heard him predict, greatly to my surprise, that the electoral vote of the State would be given to Jackson, as it was; but I was not then aware of a fact which was known to him, that many of the most influential Federalists in all parts of the State would oppose Mr. Adams.

In 1827 he appeared before the democratic caucus of Hunterdon County, consisting of a great crowd, numbering some twelve hundred persons, who voted for the candidates by a regular ballot. His success in obtaining a nomination, in spite of the opposition of the leaders of the party, was the strongest proof of his personal popularity and of his powers as an orator. It was with difficulty he obtained a hearing, a great effort being made to drown his voice and cry him down. But soon the clear tones of his voice began to ring through the room, and within five minutes he talked the meeting into silence. Judge Potts, who was secretary of the meeting, said of his speech, "He spoke for an hour; it was the boldest, the most spirit-stirring and powerful popular address I ever heard, before or since." It used to be said that in the course

of it, he literally took off his coat and turned it inside out, so wearing it during the remainder of the meeting. He not only obtained the nomination for member of Assembly, but was elected by the people.

From the time of his adoption as a candidate of the democratic party, he held a high position in the confidence and respect of that party. His democracy being, as he said, "a plant of slow growth," was progressive and enduring. It did not consist in mere adherence to party usages and party discipline, but a steady principle, leading him to earnest efforts "to produce the greatest good to the greatest number." To that portion of the party to which he was first attached, who had no real confidence in our republican system, and who only endured it as an experiment they expected to fail, he never belonged. His natural sympathies were with the onward movement of the popular cause. It was the profound remark of a great statesman, "that a young man who was not an enthusiast in matters of government must possess low and groveling principles of action; but an old man, who was an enthusiast, must have lived to no purpose." The enthusiasm of his youth was abated by age and experience; but he never lost his trust and hope in the advance of society, under free democratic institutions.

Although a party man, and ready enough to embark in party measures, seldom was any one more free from party bitterness. He never allowed political preferences to estrange him from a friend; and however high the political ferment of the day, he never permitted what he conceived to be the error of a political opponent to harden his heart or sever the bonds of friendship. He was held in strong personal

esteem, and was always in habits of intimate social intercourse with his political opponents, while living; and when he died, was honored and mourned by all who knew him.

In the fall of 1828 he married the second time, and removed to Burlington. His party having a majority in the legislature of 1829, elected him governor, a position he declined accepting. He was however appointed by Jackson, without his solicitation, and indeed desirous of leaving the incumbent undisturbed, to the office of district attorney of New Jersey, the duties of which he fulfilled for several years with his accustomed ability.

He was elected United States senator in the year 1834, and remained in that office the constitutional term, an active supporter of the administrations of Jackson and Van Buren. Several of his speeches have been published, and are among the ablest of which that period of high excitement and keen controversy gave birth. Among them was one opposing earnestly and vigorously a national bank, partaking in the hostility of his party to that institution, "whose directory seated in their marble palace at Philadelphia, like the gods on Olympus, would make rain or sunshine as it pleased their sovereign will." He opposed the bankrupt bill, passed at one session and repealed the next, as partial and unjust. One of his speeches in reply to Mr. Crittenden, and in opposition to his proposed act punishing federal officers for interfering even by persuasion with voters, has not been preserved, but is said to have been one of the most brilliant and spirited of his efforts while senator. The bill received but five votes in its favor.

One of the prominent traits in the character of

General Wall was his attachment to his native State. No one appreciated more highly the natural advantages of this, one of the Old Thirteen States, whose people took so prominent and patriotic a part in the struggles of our Revolution, and no one was more anxious to improve them. He never forgot that he was a Jerseyman. Here he was born, and here he spent his life ; here was his home, and here the friends he loved. Here he commenced life a poor orphan boy ; and here by his own native energy, and by that self-reliance which is ever the surest element of success, he had risen to honorable distinction.

But because he was a Jerseyman, he was not less an American ; he was in truth an American, because he was a Jerseyman. He differed essentially from those abolitionists whose measures helped to produce a terrible civil war, but like most of our public men who have been honored with the confidence of our people, of whatever political name, he deprecated the violence of the South ; and had he lived to see armed hosts madly engaged in hostility to the flag of our Union, he would without doubt have been found among those fighting to support it. But the conflict ended, and the Union restored, it is safe to infer that he would have earnestly opposed measures of "reconstruction" that have produced doubtful alterations of the Constitution, in opposition, as there is too much reason to believe, to the real wishes of a majority of our people.

Upon the expiration of his senatorial term, his political friends were in the minority, and he returned to the pursuits of his profession. It was not long before he was prostrated by disease of such a character as might have been expected, if it did not prove im-

mediately fatal, would so affect his physical and his mental energies as to prevent him from attending to business. It was indeed a striking proof of the indomitable energy of his character, that, upon his partial recovery, he engaged in some important trials, and conducted them with almost his wonted skill and ability.

He manifested a deep interest in the adoption of the new constitution of New Jersey, and although not a member of the convention which prepared it, he contributed materially to the success of the measure. He took a lively interest in the promotion of learning, and was an active member of the board of trustees of Burlington College. A year or two before his death, he accepted a seat in the court of errors and appeals, and is understood to have evinced much legal discrimination in the decision of some of the important questions which came before that tribunal. But this was only the gleam of the setting sun. In the month of November, 1850, his disease assumed a fatal character, and terminated his life.

WILLIAM W. MILLER was born in Hunterdon County in the year 1797. Although living in the country, which commonly presents so many more alluring pastimes for a boy, and having the companionship of a large family of brothers and sisters, yet his fondness for and his application to study was so great, that at the age of twelve years he was prepared to enter the Freshman class at college. The regulations of the institution not permitting this, he pursued his studies alone, and at the age of fourteen entered the junior class of Princeton College half advanced. Before he was sixteen he graduated, taking one of the honors

of his class, several members of which were afterwards quite distinguished men.

Owing to his youth, he was advised not to enter immediately upon his professional studies, but to review the studies he had gone over. For this purpose he went to Somerville, and there instructed in the languages a class of young men all older than himself. Pretty soon, however, he entered upon the study of the law with Theodore Frelinghuyzen, and was licensed as an attorney in 1818, and as a counselor in 1821.

He commenced practice as a lawyer in Morristown, and continued there five or six years, then removing with his family, consisting of a wife and three children, to Newark. His reputation as a public speaker began at this time to attract attention, not only in his own neighborhood, but also in the city of New York, so that frequent calls were made upon him to address public meetings. His speech in behalf of the Greeks, then struggling to relieve themselves from the oppression of the Turks, made in Trinity Church, Newark, July 13, 1824, won for him applause which rang through the whole country, and is still spoken of as a masterpiece of eloquence.

In February, 1825, he was retained as counsel for a minister of the Dutch Church, who had sued his son-in-law in New York for a gross slander. The case was one which excited universal interest, and the City Hall was crowded to excess. The celebrated Thomas Addis Emmet was one of the counsel of the defendant; so that every circumstance was calculated to enlist the sympathy and stimulate the ambition of a young lawyer. Mr. Miller spoke nearly three hours, during which the excitement of the crowd was intense, and when at last he sank exhausted in a chair,

Emmet embraced him, and the defendant sobbed so loud as to be heard all over the house. The cause was gained, but it was the last effort of the gifted orator; that night he had a hemorrhage of the lungs.

By the advice of his physicians he left home and went into the South of France, and for a time seemed better; but on the 24th of July, 1825, he was again attacked by a hemorrhage at a hotel in Paris, and died at the early age of twenty-eight years and a few months. He lies buried in the well-known cemetery of Pere la Chaise, where an iron railing marks the spot, and which is visited with melancholy interest by his American friends.

Upon the news of his death, a meeting of the bench and bar was held in the court room at Trenton, of which Richard Stockton was chairman, and Peter D. Vroom secretary. Very complimentary resolutions were adopted. Lucius H. Stockton, with the readiness and tendency to exaggeration always displayed, expressed the feeling that animated those present by saying: "I do not think it possible that a greater loss could have been sustained by society at large, or by our own fraternity, than that which has been this day announced. We sincerely lament his premature death, cut off in the morning of a life which opened with such splendid prospects, and gave so fair a promise. It is not, sir, merely that he was eloquent in debate, profound in erudition, highly adorned with the most elegant embellishment of classical science; not that he was a man great in practical wisdom, and powerful intellectual capacity; it is not merely on account of these, however important traits of his character, that we so much mourn his loss. We are more deeply and solemnly affected when we reflect

upon his amiable and affectionate temper, the active benevolence of his useful life, the honorable and delicate purity of his principles, and especially the unaffected simplicity and sincerity of that piety for which, without the least tincture of superstition or sectarian bigotry, he was so much distinguished."

Although so long in his grave, Mr. Miller was younger than myself. I had only a slight acquaintance and no professional intercourse with him; but I well remember his reputation for splendid oratorical powers, and his high character as a Christian gentleman. His Greek speech was published, and universally admired.

JACOB W. MILLER was a younger brother of William W. Miller, and in early youth came near to rival him as a speaker. He was born at Cherry Valley, in Morris County, in the year 1800, and studied law with his brother. He was licensed as an attorney in 1823, as a counselor in 1826, and in 1837 was one of those last called to be a sergeant at law. He lived and practiced his profession in Morristown, where for many years and in the adjoining counties, he was a leading and influential advocate. He had a large practice, insomuch that I recollect when at one time a circle of lawyers were discussing the probable gains of the prominent members of the profession, and when three thousand dollars a year was supposed to be about the highest mark, he was spoken of as probably gaining more than any other counselor in the State. He was distinguished not only as a fervent and impressive speaker, but for patient industry, faithfulness, and tact. He was distinguished also for that sound common sense, which is above all other

sense, and was by its exhibition in public and private, a man of great personal influence.

In 1838 he entered public life, becoming a member of the legislative council of this State. In 1840, and subsequently in 1846, he was elected by the Whig party, to which he belonged, to the senate of the United States. That body was then in the zenith of its distinction. All the great men were there. He was not equal to several of them; but the sterling qualities of his intellect and character were not overshadowed. He gained and retained the respect of his associates and of the country at large.

In April, 1850, I visited Washington and saw him in the senate chamber. The compromise measure in reference to the admission of California into the Union as a State, was before that body. He was favorable to the immediate admission of the State, as recommended in his message by President Taylor, and of course differed from the leader he had been accustomed to follow. Upon this occasion I saw, with no little surprise and amazement, Miller and Dayton, and most of the other Whig members, following the lead of Mr. Benton, the man of all others they had been accustomed to contemn; while most of the Democrats were just as implicitly following the lead of Mr. Clay.

I could not help rather ironically congratulating Mr. Miller on his very remarkable choice of a leader, about the last man he had ever expected to follow. He replied with very good humor, that it certainly was a very unlooked for change, but circumstances had rendered it necessary.

On the next day I went with him to wait on the President, and here a conversation occurred still more curious than the proceedings in the senate

chamber. No other person accompanied us but his young son ; and we found only one person in the reception room, who left directly upon our entrance. I was introduced as the attorney-general of New Jersey. After a polite reception the President commenced talking to Mr. Miller very rapidly, and with considerable excitement in reference to the proceedings in the senate, and declared himself in favor of admitting California without terms, and opposed to Mr. Clay's propositions.

The resolutions introduced by Mr. Clay, which he hoped would make an amicable arrangement of the whole slavery controversy, were to the effect that California should be admitted as a State without restriction as to slavery ; that appropriate governments should be established in all the other Territories without restriction as to slavery ; that slavery should not be abolished in the District of Columbia, while it existed in Maryland, without the consent of the people of that State and of the District ; that the slave-trade should be abolished within the District ; that more effectual provision should be made for the restitution of fugitive slaves ; and that Congress had no power to prohibit the trade in slaves between the slaveholding States.

Without particularly discussing the difference between the two measures, the President spoke of a speech Mr. Clay had recently made, in which he had praised General Scott very highly, and declared him to be the greatest general for strategy then in the world. Yes, Taylor said, "some senator might have replied and told him what his strategy or stratagem was ; by licking Polk's boots he had got my army away from me, and left me at the mercy of Santa

Anna,— that was his strategy or stratagem; and thus he sacrificed Mr. Clay's son,—that was his strategy or stratagem." Upon every emphatic pronunciation of the word stratagem, repeated many times, he shrugged his shoulders and spit.

He then went on to speak of the celebration of Mr. Clay's birthday, which was soon to take place at New York, when Mr. Cooper, senator from Pennsylvania, was to deliver an address. The plan agreed upon, he said, was to run Mr. Clay for the next president with General Scott for vice-president, to which he said the latter had reluctantly assented. I understood Mr. Miller to say that he believed such a plan was on foot. It was afterwards frustrated by the death of Mr. Clay before the time for the new election arrived. General Scott, as is well known, was set up as the Whig candidate, and was beaten by Pierce, and the Whig party dissolved. I was informed, and believe it to be true, that Scott, although commander-in-chief of the army, never saw Taylor after his election to the presidency. It was said that upon one occasion he got half way up the stairs on his way to the reception room, but something occurred which made him beat a retreat, almost as hasty as his dispatch of the plate of soup mentioned in one of his letters, and which gave to his opposers such a fine chance for ridicule.

General Taylor spoke also of Mr. Webster, but with much more of good humor than characterized his talk about Scott and Clay. He said laughingly that Mr. Webster had made a very smooth speech, but had lost one of the leaves, and had to make a supplement the next day. He had been told by a mutual friend that Mr. Webster would support his administration, but if

he had ever made such a pledge he had forgotten it. He mentioned having been shown a newspaper article, which stated that he had not consulted Mr. Webster or Mr. Clay about his cabinet, which he said was very true. All this was spoken directly to Mr. Miller, without his appearing to notice that anybody else was in the room. It seemed to both of us so extraordinary, that after leaving the White House I suggested that it would not be proper to make what was said publicly known; and Mr. Miller requested me to abstain from publishing it until there was no longer any danger of its doing harm.

It is curious to compare Taylor's estimate of Scott with what the latter says of him in his autobiography, vol. ii. page 382:—

“General Taylor's elevation to the presidency, the result of military success, though a marvel, was not a curse to the country. Mr. Webster in his strong idiomatic English, said of the nomination, ‘It was not fit to be made.’

“With a good store of common sense, General Taylor's mind had not been enlarged and refreshed by reading, or by much converse with the world. Rigidity of ideas was the consequence. The frontiers and small military posts had been his home. Hence he was quite ignorant for his rank, and quite bigoted in his ignorance. His simplicity was child-like, and with inmeasurable prejudices, amusing and incorrigible, well suited to the tender age. Yet this old soldier and neophyte statesman had the true basis of a great character; pure, uncorrupted morals, combined with indomitable courage. He had no vice but prejudice.”

This strikes me as a pretty fair, although certainly

not a friendly appreciation of General Taylor's fitness for the presidential chair. The triumphant election of Jackson affected all our subsequent elections. The statesman has gone under, and a soldier will be the man, whenever a war occurs to give him a chance of prominence. Scott has been as yet the only failure.

After the demise of the Whig party, Mr. Miller attached himself to the Republicans, although not an abolitionist. He had all his life acted in opposition to the Democrats, deplored the existence of slavery, and was hostile to its extension. He opposed Mr. Clay's compromise measures, and regarded the repeal of the Missouri Compromise as the prelude to an attempt at dissolution of the Union. As a matter of course he was a warm supporter of the general government in the measures adopted for preventing or suppressing the rebellion.

After his retirement from the senate, he returned more actively to the business of his profession, which he had never entirely relinquished; but his so long engrossment in other pursuits made it irksome to him, and failing health soon rendered him more and more averse to exertion. He argued a few cases in the courts in which I sat, with marked ability. But a cold which affected him in 1861, ripened into consumption, to which he was constitutionally prone, so that in the following year he died. He may be truly characterized as having been an amiable Christian gentleman; of abilities not of the highest, but above the common order; and as one who lived beloved and respected, and died lamented by all who knew him.

CHAPTER XV.

LAWYERS I HAVE KNOWN.

THEODORE FRELINGHUYSEN. JOHN RUTHERFURD. WILLIAM CHET-
WOOD. JOHN J. CHETWOOD. AARON O. DAYTON. WILLIAM N.
JEFFERS. ALPHONSO L. EAKIN. JOSIAH HARRISON. FRANCIS L.
MACCULLOCH. RICHARD P. THOMPSON. ASA WHITEHEAD. JO-
SEPH W. SCOTT.

THEODORE FRELINGHUYSEN was the grand-
son of the Rev. John Frelinghuysen, who came
from Holland in the year 1720, and ministered more
than a quarter of a century to the Dutch settlers in
Somerset and Middlesex counties. His grandmother,
the daughter of a rich merchant of Amsterdam (after
the death of her first husband, long known as Juf-
frouw Hardenbergh), was a woman of keen intellect,
strong will, and ardent piety, and from her, as well as
her husband, his descendants no doubt derived that
high character which distinguishes them to the pres-
ent day. His father, Frederick Frelinghuysen, was
educated at Princeton, and was a distinguished law-
yer, and early in life a member of the Provincial and
Continental Congress. During the Revolution he was
a captain of artillery ; in that capacity being engaged
in the battle with the Hessians at Trenton, and after-
wards as a colonel of militia at several engagements
with the enemy. In 1793 he was elected senator of
the United States, a place which he resigned in 1796.
During the administration of General Washington he
had a command as major-general of a portion of the

militia sent into Western Pennsylvania to quell the disturbance known as the Whiskey Insurrection. He died in 1804, at the age of fifty-one, and, as is believed, justly entitled to the eulogium engraved on his tombstone :—

“He died greatly beloved and lamented. Endowed by nature with superior talents, he was from his youth intrusted by his country with the most important concerns. At the bar he was eloquent, in the senate he was wise, in the field he was brave. Candid, generous, and just, he was constant and ardent in his friendship. Ever the patron and protector of merit, he gave his hand to the young, his counsel to the middle-aged, his support to declining years. He left to his children the rich legacy of a life unsullied by a stain, and adorned with numerous expressions of public usefulness and private beneficence.”

My father, who knew him during the Revolution, and afterwards as a fellow-member of the legislature, always spoke of him with the highest respect, as an able legislator, and rather remarkable for his sprightly vivacity.

Three of General Frelinghuysen’s sons were lawyers. John, the eldest, born in 1776, admitted to the bar in 1797, died in 1833. He was highly respected, and of deep and ardent piety; not distinguished as an advocate, but of excellent business talents, and extensively occupied in public affairs, holding the office of surrogate, and frequently a member of the legislature. In that capacity I had the opportunity of knowing how deserving he was of the esteem in which he was always held.

Frederick Frelinghuysen, the younger brother, born in 1788, a graduate of Princeton, was licensed as an attorney in 1810. He was distinguished as an advocate, and had a large practice, but he died in 1820, at the early age of thirty-two. Both these

brothers, I believe are still represented at the bar, by their descendants. Frederick T. Frelinghuysen, the distinguished senator, is a son of Frederick ; he was adopted and educated by his uncle Theodore, who had no children.

Theodore Frelinghuysen was born in 1787, graduated at Princeton in 1804, studied law with Richard Stockton, was admitted to the bar in 1808, and died in 1862. I have always esteemed it one of the great blessings of my life that I was brought early into association with him, and could claim him as my friend. While he was a member of the senate at Washington I had occasion to pay a visit to Boston, and took with me a letter of introduction from him to a clerical friend there, who introduced me to several of the best religious circles of that city, as the friend of Mr. Frelinghuysen, and upon one occasion I was for a short time mistaken for Mr. Frelinghuysen himself. The manner in which I was received by persons who had no personal acquaintance with him, gave unmistakable evidence of the high character he had justly acquired ; and I was enabled to understand more fully the sentiment which induced Fulke Greville, created Lord Brooke by Queen Elizabeth, to desire to have inscribed on his tomb, that he was a friend of Sir Philip Sidney. The powers of Mr. Frelinghuysen were not equal to those of Mr. Webster, or of Mr. Southard, or of several others of our distinguished men ; but in many respects he was superior to any of them.

First of all in importance, his piety was deep and ardent. Of all the men I have ever known, he was the most faithful and untiring in exercising a Christian influence over others. This indeed may be truly

said to have been his great talent. His piety was so unostentatious and yet so manifest, his manner of address so winning, his integrity so complete, and his desire to do good so intense, that he could not fail to exercise a good influence over those with whom he came in contact. Even those who would turn with disgust from any attempt of others to introduce religious subjects, would listen to him at least with assumed patience, and thank him for his faithfulness. His natural temper was quick and irritable, and although generally under complete control, I once witnessed a manifestation of it, unexpected and at the moment painful. But this quick sensibility was one of the elements of his power. It was manifested in his voice and demeanor. He was indeed the most persuasive speaker I have ever listened to. His speeches, when reported and read, cannot be said to be at all remarkable. But like Whitefield, and all great natural orators, his voice and manner were such as to bring his hearers into entire sympathy with his own feelings, and thus to overmaster them.

It cannot be said that Mr. Frelinghuysen was uncommonly learned ; but he had a rapid, correct, and comprehensive mind, which enabled him fully to understand any subject to which he applied himself. His judgment was quick and seldom erroneous. He was thus a safe counselor as well as a most successful advocate.

With these great advantages, it is not wonderful that he took so high a position among competitors distinguished for the best qualities of successful lawyers. From his admission to the bar until he withdrew from the profession in 1838, a period of thirty years, he was fully employed, and engaged in most

of the important causes arising within the sphere of his practice. In 1817 he was chosen by a joint meeting, a majority of which were of different politics from his, attorney-general of the State, and was re-elected, holding the office until he was elected to the senate of the United States in 1829. In 1826 he was elected one of the justices of the supreme court, a place which he declined to accept.

As a senator, he did not quite rank with those called our greatest men, of whom not a few were his associates; but no one exercised a more salutary influence, and was listened to with more respect. He filled the place in the senate which was for a much longer period filled by Mr. Wilberforce in the British parliament. His voice was always heard on the right side of all questions partaking of a religious or moral character, like the Sunday mail and Cherokee Indian bills. The congressional prayer-meeting, which I found in full activity several years after he left the senate, if not originated by him, was as constantly attended by him as the sittings of the senate itself. There is indeed no reason to doubt that his personal influence at Washington was equal if not superior to that of any other individual. Those who differed from him in regard to the political questions of the day, did not fail to do justice to the purity of his motives and the integrity of his character.

When the term of Mr. Frelinghuysen was about to expire, and it was known that the election in this State, in the fall of 1834, would determine the question of his reëlection, I was among those who, like himself, had not become reconciled to General Jackson as a chief magistrate of the nation, and for the last time in my life, impelled by an anxious desire to

see him retained in a place he so well filled, I engaged earnestly in the political canvass. It proved a vain effort. The popularity of Jackson carried away the public voice, and brought into the list of supporters a large number of the old Federalists of the State, who, following the lead of Hamilton, were dissatisfied with the Adamses, both father and son.

It has been supposed by some that a conscientious man like Mr. Frelinghuysen could not engage as an advocate, to plead for those he was not entirely convinced had the right side of a cause in which he took a fee. But he certainly never so misconceived the duty of a lawyer. To do this would be to determine that the profession of an advocate is not a lawful calling, and cannot be undertaken and practiced by one who desires to be governed by the holy law of God; and not only this, but that no Christian can rightly employ a lawyer. If the calling be lawful for any one, it is not only lawful for the Christian, but it is exceedingly desirable that all who follow it be not merely professedly, but truly godly and righteous. All who have even a slight acquaintance with the complicated nature of the laws in a civilized society, and with the difficulty rightly to administer such laws, so as to do equal justice to the ignorant and the intelligent, the obscure and the influential, must see that the existence of a trained body of men, ready to aid those who have occasion to appeal to the laws, either as complainants or as defendants, is indispensable. So indispensable, indeed, that the laws of this and of probably all other well regulated governments provide, not only that a litigant party shall be entitled to employ an advocate if he has the means of compensating him for his services, but that if he has

not, he shall have one assigned to him by the court, to perform this service gratuitously.

The lawyer who should undertake to make it his rule to engage in no case he was not convinced beforehand was just, or who should determine to abandon a case the moment he felt persuaded he was on the wrong side, would set very dangerous snares for his conscience. To avoid falling into one error he would be pretty sure to fall into a greater. Every lawyer of experience soon learns that cases, the legality or justice of which have appeared to him doubtful, have turned out, or at any rate have been thought by those whose duty it was to decide them, perfectly just and legal. In fact a majority of the causes brought into the courts are more or less doubtful, either as to the facts or the law, and often as to both. Many things may be properly urged on both sides of such questions; and the very object of a public discussion by skilled advocates on both sides, is to afford the means of fully understanding and rightly deciding them. With all the aid thus afforded, judicial opinions are not always correct; but without them the danger of error would be far greater.

But while all this is perfectly true, and was well understood and acted upon by Mr. Frelinghuysen, it does not follow that the profession is free from very peculiar dangers. The wish to succeed is natural, and without it an advocate would be apt to lack energy and earnest effort. To keep this wish within due bounds, and never to permit it to induce him to aid in any attempt to pervert the truth or the law, is the duty of every truly conscientious lawyer, and one that will keep him ever vigilant. The temptation to swerve from the strict path of integrity is constantly

besetting him, and as constantly calls for self-denial and moral courage, to enable him to conquer it.

The constant desire and aim of the lawyer should be to aid the court and jury in arriving at the truth. While he argues for a fee, and is justly entitled to live by his profession, he should never forget that he is one of the officers of justice, and, as such, has taken upon himself solemn responsibilities. His duty to his client should be, not the highest in his regard, but second to the claims of truth and justice. One great duty he should never forget, and that is the duty of discouraging unnecessary litigation. Clients are frequently not only blinded by self-interest, but inflamed by passion. To take advantage of such feelings is a worse sin than he is guilty of who indulges them. The lawyer who upon the retrospect of his professional life can feel that he has faithfully endeavored to be a wise and safe counselor, has abstained from seeking to gain advantage from the weakness or passions of those employing him, has endeavored to heal rather than to widen breaches, has declined to obscure or pervert the truth in the examination of witnesses, has kept himself free from a desire to triumph over an adversary at the expense of right, and has desired to fail when the cause of justice so required, may look back upon a safe and honorable career; and upon such a professional career as this Mr. Frelinghuysen undoubtedly did look back.

As a public prosecutor of criminals, while careful to enforce the laws faithfully, he was never willing to urge a conviction unless the case was reasonably clear of doubt. He considered it one of the advantages of this position that it gave him more discretion in the conduct of the case, and freed him from the pressure

of clients prone to think that because he had received their money he was bound to gratify their sometimes unreasonable expectations. In exercising this discretion, however, it may have happened, as it once did to myself, when prosecuting an accused person for murder, before the statute had made a distinction between murder of the first and second degree, and nothing appeared to indicate any malice, but the mere fact that a blow had been given from which death ensued, and I declined to insist upon any other verdict than manslaughter, Chief Justice Ewing not only felt it his duty to instruct the jury that malice ought to be implied from the fact of killing, as was undoubtedly then the severe rule of the common law, but he decidedly though gently rebuked the prosecutor for having failed in what he considered his duty so to insist. I may add that I was not grieved either by the rebuke, or by the verdict of the jury for the minor offense.

The profession of a lawyer in full practice is not only arduous, but to a truly conscientious man is beset with many and peculiar trials. These trials are increased, I think, by the erroneous opinions in regard to his duty which have been expressed by those who, without any adequate knowledge of his true position, have undertaken to instruct him. Dymond, a Friend, takes the ground in his "Moral Philosophy," that a conscientious lawyer cannot aid a criminal in escaping justice by taking advantage of a defect in the indictment, or a defendant in evading the payment of an honest debt by pleading for him the statute of limitations; and even Mr. Hoffman, a lawyer himself, in his excellent work, entitled "A Course of Legal Study," states as one of his rules, "I will never plead the

statute of limitation when based on the mere efflux of time, for if my client is conscious he owes a debt, and has no other defense than the legal bar, he shall never make me a partner in his knavery."

Edward O'Brien, an Irish barrister, and evidently a most sincere Christian, who died in 1840, at an early age, in a work entitled, "The Lawyer; his Character and Rule of Holy Life," published by Cary & Hart, in 1843, and which ought to be carefully read by every lawyer, goes so far as to declare: "First he makes it known that he will undertake the conduct of none but just causes; and here he esteems those causes alone to be just which natural law, or positive laws not contradicted by natural laws, do make such. The judge is appointed to administer the laws according to their letter; he is bound to do so by the command of the prince and the oath of his office, and if at any time he is obliged to give a judgment which he knows must work injustice, he does so against his will. But the lawyer who being counsel and assists his client willingly, no law compelling him, counsels and assists him in that which is unjust, becomes before God a partaker in his client's evil deeds."

All this proceeds, I think, upon a mistake as to the real position of the lawyer. The earnest desire of these writers to enforce upon the lawyer's conscience the claims of justice has misled them, as the popular notion that the advocate is simply the representative of his client, has misled others. It is an error into which I think Mr. Frelinghuysen did not fall, although undoubtedly he did feel and act upon the principle, that it is far safer to err on this side of the question than on the opposite.

It is a plain truth that no one can properly do that

for another which he cannot honestly do for himself; provided, that when he acts for the other, he acts as freely and with the same moral relations as when he acts for himself. But the lawyer does not so act when he appears for his client. So far as he is merely his adviser and friend, and this is a part of his character, he is undoubtedly bound honestly to advise and persuade his client to be not only just but generous; but he is something more than a mere willing counselor and friend; he is a minister of the law, holding a situation as a sworn officer of the court, whose duty it is to assist parties in bringing their cases before the court, that they may be adjudicated according to law. A man who is entitled to sue or defend, *in formâ pauperis*, may compel this service, without fee or reward, and in all other cases, upon being suitably paid, the duty must be the same, and in case of necessity, I suppose may be and would be enjoined by the judge.

In my opinion it must be an extreme case which will justify a lawyer in refusing to apply plain principles of law either in the prosecution or defense of actions. Taking the instance of the statute of limitations, in regard to which many have doubted, and which at one time even our judges regarded as "a rogue's law," and did their best to evade, experience has proved its beneficial influence. Whether it shall be interposed in any particular case, or whether he shall wait to be sued for a just demand, depends on circumstances, and is a matter for the conscience of the party, which the law does not meddle with. The plea of this statute must be interposed in a technical manner, which ordinarily no one but a lawyer can do. The very design of his office is to bring forward the legal question for the decision of the judge. By what right,

then, shall he refuse? Shall he say, "Sir, in my judgment, your defense is unconscientious." His client may truly answer, "The law gives me this defense unconditionally; my conscience is my own, and for the right use of it I am accountable only to God. I respect and have duly weighed your advice; but you have assumed a public office, specially charged with the duty of enabling litigants to avail themselves of the law, and you have no more right to deny me the plea, if I insist upon it, than the judge has to overrule it." Shall he say, "Seek a more pliant advocate?" But all advocates are bound by the same moral law and ought to be Christians, and if one ought to refuse the plea so ought all. And we have this anomaly: the law has provided a bar against every action not commenced within a certain time, and has provided an officer to set up that bar, but it must depend on the conscience of the officer whether it shall be enforced.

If this view of the subject is not correct, I think it must be conceded that no conscientious man can safely follow the business of an advocate. The whole system of human law is, from the necessity of the case, artificial and imperfect, by which no more is effected than by general rules to approach as near to justice as the imperfect nature of all human institutions will allow. Some contracts to be legal must be in writing; an infant cannot legally bind himself at all, except for necessaries; a deed or will must be formally executed, or it does not operate; an indictment for a crime must have certain formalities. Yet all these and many other regulations of daily occurrence may work a particular wrong. Must the lawyer, before he can conscientiously apply these rules, be satisfied that his client may conscientiously avail him-

self of them? If such be his duty, it must be confessed that he had better never enter into the profession.

In the language of Hooker, "So natural is the union of religion with justice, that we may boldly deem there is neither where both are not. For how should they be unfeignedly just, whom religion doth not cause to be such, or they religious which are not found such by the proof of their just actions. If they which employ their labor and travail about the public administration of justice, follow it only as a trade, with an unquenchable and unconscionable thirst of gain; being not in heart persuaded that justice is God's own work, and themselves his agents in this business; the sentence of right God's own verdict, and themselves his priests to deliver it; formalities of justice do but serve to smother right, and that which was necessarily ordained for the common good, is, through shameful abuse, made the cause of common misery."

The advocate who willingly aids in perverting legal proceedings, to enable unscrupulous persons to plunder the public, by fraudulent schemes, or by the corrupt management of railroads or other corporations; or who so conducts the defense of criminals as to attract the general applause of notorious offenders, insomuch that they instinctively apply to him, ought not to be accounted an honorable man, and certainly cannot be a Christian. And when such men are found to do these things for enormous fees, they cannot be otherwise regarded than as a reproach to the profession. But although there is too much reason to fear that men aspiring to hold an honorable rank in the profession do sometimes err even to this extent, the

much more common error into which they fall is to willingly and earnestly advocate grounds of defense for criminals which they cannot help knowing are improper or entirely unsupported by the evidence, the most flagrant example of which is the plea of insanity in certain cases of murder.

And when it is considered how important legal knowledge is, and how large a part lawyers necessarily take in the proceedings of our republican institutions, the importance of this subject can hardly be overrated. Many persons are greatly prejudiced against lawyers; but what would be the end of a government depending upon a system of law, if those who are trained to expound it are corrupt, or are discarded? Lawyers are exposed to special temptations and have need of all their vigilance, and indeed of earnest prayer, to overcome them. But long experience has satisfied me, that as a class they are quite as honest as any other class of the community; and I trust it is not mere partiality makes me say that upon the whole they are even the most trustworthy men we have. There are knaves in all trades and professions; but a lawyer of the average honesty of disposition is in general better acquainted with the true rules of morality and with the evils of departing from them, and hence, as he ought to be, is more to be relied on to observe them; and the extent to which they are trusted is evidence that this is the sober sentiment of the community.

Mr. Frelinghuysen was a man of prayer, and was in the daily habit of seeking aid from the only true source of power to resist temptation. Could every lawyer be persuaded to adopt the prayer given by O'Brien, he might hope never greatly to err: "O

Lord, our heavenly Father, who in thy providence hast appointed governors, thy ministers, to dispense thy laws among all nations; grant that we and all thy servants ministering in things pertaining to justice, may faithfully fulfill the duties of our calling with a single eye to thy glory, and a humble dependence upon thy heavenly blessing. Mercifully, we beseech thee, turn us away from all undue love of wealth and earthly power; keep us from all pride, malice, and evil speaking; preserve us from the fear of evil men, and the contagion of ill example; strengthen in us the love of truth, justice, and mercy; and so quicken our hearts with love towards thee, that we, loving thee above all things, may so love our fellow-creatures, even as thou hast loved us. Grant this, O Lord, for Jesus Christ's sake, our only Saviour and Redeemer. Amen."

Feeling deeply the dangerous temptations, and the incessant fatigue to which a large practice exposed him, Mr. Frelinghuysen, was often on the point of giving it up, and becoming a preacher of the gospel. Satisfied, however, not only from his own experience, but from the advice of judicious friends that he was probably doing as much good for the cause of religion, in his situation at the bar and in public life, as he could in the ministry, he resisted these temptations, and continued at the bar until he had passed the middle of life. And no man was more faithful in using every suitable opportunity of exercising an influence for good. But few, if any, of his associates at the bar, or in public life, were left without his having taken some opportunity of bringing before them, orally or in writing, the subject of personal religion. And seldom did he fail to make a deep and serious

impression upon those he addressed. The influence of a few well chosen, sympathetic, earnest words, like his most impassioned addresses to a jury, often seemed irresistible. I doubt if any layman in the land, or if few or any ministers of the gospel, ever made so many personal appeals on the subject of religion as during his life he did.

He was an early and earnest supporter of the measures adopted to discourage the use of intoxicating drinks, and besides his own example of entire abstinence from their use, made many powerful addresses in favor of the practice of total abstinence. But in this as in all his efforts to do good, he was careful not to overstep the bounds of Divine truth and reasonable prudence, as so many have done, to the great injury of this and other benevolent objects.

Early in 1839 he was chosen chancellor of the University of New York, and after considerable hesitation he accepted the situation and removed to New York. He had attained an age when, like most of those who have enjoyed a large practice as an advocate, he began to feel a growing repugnance to the conflicts of the profession, especially in the trial of causes involving disputed facts, and such a decision was to be expected. But I have always doubted whether he would not have done better to remain where he was; and am by no means certain that he did not himself regret the change.

In 1844 he was selected by the whig party as their candidate for vice-president, with Mr. Clay, then the great leader of the party, as the candidate for the presidency. Greatly to the surprise of their supporters, these popular men failed to be elected. The great conflict between the North and the South, in regard

to slavery, soon became the absorbing question, and resulted in the triumph of the party of the north, which assumed the name, once so denounced, of Republicans. Although never ranked among abolitionists, but a supporter of the Colonization Society, Mr. Frelinghuysen threw the whole influence of his high character on the side of the Republicans. He did not live to see slavery finally overthrown, but so long as he lived he aided to the extent of his power in the maintenance of the Union. In 1841 he was chosen President of the American Board of Commissioners for Foreign Missions; and in 1846, President of the American Bible Society. In the year 1850, he was chosen President of Rutgers College, and removed to New Brunswick, thus in the evening of his days returning to the cherished spot where its morning began, and was permitted to end a life of singular distinction and usefulness, dying at the age of seventy-five years.

JOHN RUTHERFURD, with whom I became well acquainted while we were associated as commissioners on the part of New Jersey, for settling the controversy with New York respecting the waters between the two States, was licensed as an attorney in 1782. He was the son of Walter Rutherford and a daughter of James Alexander, and was born in the city of New York in the year 1760. Having graduated at Princeton College, he studied law partly with Richard Stockton, the elder, and partly with Judge Paterson.

Directly after his admission to the bar, he married a daughter of General Lewis Morris, of Morrisania, and settled at first in the city of New York. Being one of the vestry of Trinity Church, he had the care of

the real estate of that wealthy corporation, and his name is found in the Directory of 1786, among the lawyers, as of 50 Broadway. In 1787 he took up his residence at his farm called "Tranquillity," in Sussex County, and the next year was elected a member of the Assembly. Having a large property, as one of the proprietors of East Jersey, and otherwise, he does not appear to have engaged in active business as a lawyer. In 1790, when he had barely reached the age of thirty, required by the Constitution, he was elected a member of the senate of the United States, in the place of my uncle, Jonathan Elmer, who was one of the first senators, and drew the class whose seats became vacant at the end of two years, and was denied a reëlection, as was said, because he was absent when the vote was taken fixing the seat of the general government. Mr. Rutherford was reëlected in 1796, but resigned in 1798. As during his time the senate sat with closed doors, but little is known of the part he took in the business transacted.

About the time he left the senate, he took up his residence at Trenton, at a beautiful site on the banks of the Delaware, where he continued until 1808, when he removed to a seat on the east bank of the Passaic, a few miles above Newark. At that place he died in 1840.

Although not following the profession for which he was educated, his time was fully occupied in the care of his large possessions, in the business of the East Jersey Proprietors, of whom he was president from 1804, and in various public affairs of consequence. During ten years from 1801, he was a commissioner with Simeon De Witt and Governeur Morris, to lay out the city of New York, by whom the plan of the city was adopted, and the survey and map completed.

In 1827, in conjunction with Richard Stockton, Theodore Frelinghuysen, James Parker, and myself, he was a commissioner appointed by Governor Williamson, in pursuance of a law of this State passed in 1824, entitled "An act for the settlement of territorial limits and jurisdiction between the States of New Jersey and New York." There had been an attempt to settle this long pending dispute in 1807, when Aaron Ogden, Alexander C. McWhorter, William S. Pennington, James Parker, and Lewis Condict were the commissioners on the part of New Jersey, who had a long and rather angry controversy on the subject with the New York commissioners, published by order of the legislature, without any result. The commissioners appointed in 1827 had several conferencees with the New York commissioners at Newark and Albany, but failed to agree upon any terms of settlement. So little disposition was there at that time on the part of New York to yield any part of their pretensions, that while we were actually in conference at Albany, a bill passed one branch of the legislature in session there, which afterwards became a law, asserting and declaring the boundary line of New York to extend "along the west shore at low water-mark of the Hudson River, of the Kill van Kull, of the sound between Staten Island and New Jersey, and of Raritan Bay to Sandy Hook." The proposition on both sides, and the argument in behalf of New Jersey, will be found fully stated in a message communicated to the legislature of New Jersey by Governor Williamson in February, 1828, and printed for the State. It is somewhat curious to notice, that the original right of New Jersey to the whole of Staten Island, was much plainer than her right to the middle

of the Hudson River, as we claimed, and as New York finally conceded to us.

Between 1828 and 1833, many conflicts arose between persons claiming rights on the shores and oyster beds west of the middle of the Hudson, and of the waters between Staten Island and New Jersey, which at times came near to actual warfare. In 1833 new commissioners were appointed on the part of New York, and Frelinghuysen, Parker, and myself were reappointed for New Jersey; and it soon appeared that we were to be met with an entirely different spirit from that which had before prevailed. Instead of stubborn persistence in the claims put forward on the two sides, the single question was, how we could arrange terms of settlement that would be just and equitable, and prove acceptable to the people of the two States. It being suggested on behalf of New Jersey, that, waiving all considerations of abstract right, New York should acknowledge the true boundary line to be the middle of the river, and that New Jersey should agree that New York should have all such rights west of that line as might be deemed important to secure to that State the right to regulate the police and the quarantine on the whole of the waters dividing the States; this proposition, after time had been taken for full consideration and consultation, was acceded to by the New York commissioners. The result was the consummation of the agreement entered into September 16th, 1833, which was ratified by the legislatures of both the States, and approved by the Congress of the United States.

WILLIAM CHETWOOD was the son of John Chetwood, one of the justices of the supreme court, and was born

at Elizabethtown in 1771. The family were originally Quakers, and settled first in Salem County, but after the removal of Judge Chetwood to Elizabethtown became connected with the Episcopal Church. William Chetwood graduated at Princeton in 1792, and then studied law with his father. He was a volunteer, and served on the staff of General Lee during the Whiskey Insurrection, having the rank then or afterwards of major, by which title he was usually addressed when I first knew him.

He was licensed as an attorney in 1796, as counselor in 1799, and in 1816 was made a sergeant at law. He married a daughter of Colonel Francis Barber, killed during the Revolutionary War by the falling of a tree, and settled in his native place, where he resided until his death in 1857, at the advanced age of eighty-six years and six months.

Living in different parts of the State, I only knew him as for some years a constant attendant on the sittings of the supreme court at Trenton. He was one of those indefatigable workers who, by persistent industry, are pretty sure to succeed. A story used to be told of him, that upon one occasion he went to the court in his own carriage, as the custom then was, expecting to remain only a day, and without a change of linen. Unexpectedly detained, it became necessary for him to go up to Sussex County without returning home; and he turned his shirt, so as to appear as decently as circumstances would permit. But before he could procure a change he found it expedient to turn it back again, and so arrived at home about as he left, but with a shirt rather the worse for wear. This was the opposite of Chief Justice Black, of Pennsylvania, whose wife, it has been reported, when she examined

his clothing upon his return from a circuit, found three shirts missing, which after considerable search were found all safe on his back.

Mr. Chetwood was elected a member of Congress by the Jackson party, being one of those Federalists who preferred him to Adams. Afterwards, however, he acted with the Whigs. He accumulated a very handsome estate, a considerable part of which I have understood was invested in New York insurance company stocks, and was lost by the great fire which occurred in 1835, leaving him, however, a competent support. He had retired from active business before I became a judge.

JOHN JOSEPH CHETWOOD was a grandson of Judge Chetwood, and the son of Dr. John Chetwood, a physician of large practice who died of the cholera in 1832, surviving but a few hours after he was attacked. The son was born in 1800, and graduated at Princeton in 1818. He studied law with his uncle William, was licensed as an attorney in 1821, as a counselor in 1825, and was called as a sergeant at law in 1837. He married a granddaughter of General Elias Dayton, and resided at Elizabethtown, where he died in 1861.

He was a member of council, and surrogate of the County of Essex. For many years he was prosecutor of the pleas of Union County, and an active business man, highly esteemed in and out of his profession, and although of a generous disposition, successful, as I have understood, in accumulating property. He was a trustee of Burlington College, and ready to second every effort in aid of education. In social intercourse I found him a genial companion, well informed, and well deserving the popularity he evidently enjoyed among his neighbors and friends.

AARON O. DAYTON was born at Elizabethtown in 1796, and was the son of Elias B. Dayton, of that place, his mother being a daughter of Dr. Thomas B. Chandler. His grandfather, General Elias Dayton, was a well known and distinguished officer during the War of the Revolution. Their ancestor, Ralph Dayton, came from England to Boston, and thence to East Hampton, Long Island, about the year 1650. His son Jonathan, father of General Elias Dayton, emigrated to Elizabethtown about the year 1720.

Young Aaron Ogden Dayton, named in honor of Governor Aaron Ogden, after the usual preparatory studies in the grammar school at his native place, entered Princeton College, and graduated with the highest honor in 1813, in the same class with Governor Pennington. After the usual course of study with Aaron Ogden, he was licensed as an attorney in 1817, and as a counselor in 1821, being a little more than two years behind me. Directly after obtaining his first license, he went out to Cincinnati with a view to settle, and was admitted to the bar there. But he soon returned, and selected Salem as his place of business. During his residence and practice here, I became well acquainted with him, meeting him in business and in social intercourse, and we remained friends to the end of his life.

In 1823 he was elected a member of the Assembly from the County of Salem, in opposition to the regular democratic ticket, and we were associated and generally acted together in the legislature. He was the youngest member of the house, taking an active and influential part in all the proceedings. The next year he declined being a candidate, but entered heartily into the contest for the presidency in behalf

of General Jackson. He was a member of the convention for the nomination of electors, and drafted the address which aided in carrying the State for their candidate. Just before the election, I was much surprised to hear General Wall say Jackson would carry the State, and did not believe it possible; but I did not know, as he did, that so many of the leading Federalists were prepared to advocate him.

In 1825 Mr. Dayton removed to Jersey City, and the next year to New York, proposing to engage in his profession there. But he was soon induced to enter the political arena, and in 1828 was elected by the democratic party, as the Jacksonians were now called, to the legislature, by a large majority. Afterwards he was appointed a master of chancery and injunction master, then of some importance, for the city of New York and Long Island. But owing to the increasing severity of a nervous disease which culminated in his death, he was induced to abandon the law, and to accept a position in the diplomatic bureau of the state department at Washington, tendered to him upon the recommendation of General Wall, then a senator.

In 1836 he was appointed chief clerk of the department of state, then of even more importance than now, and for which he was well fitted. In 1838 he was appointed fourth auditor of the treasury, charged with the settlement of the navy accounts, and remained in that office through all the varying administrations until his death in 1858. He occupied that position during the time I was a member of the house of representatives, and was universally regarded as one of the best officers of the government.

He represented his grandfather in the New Jersey Society of the Cincinnati, and in 1835 delivered a very

eloquent eulogy of Lafayette, before that body. In 1839 he delivered the address before the societies of Princeton College. These were both productions exhibiting a high order of talent. Had his health permitted him to remain at the bar, there can be no doubt that he would have ranked among our most respectable advocates.

During my early professional life, when I attended the courts at Salem, that place was of more importance than Bridgeton. The county was richer, and the business of all kinds better than that of Cumberland. Lawyers from Trenton and Woodbury were constant in attendance, and well employed. But within the last quarter of a century, the County of Cumberland has gone ahead of Salem in professional and other business, and in population. The latter county, within my memory, had no lawyers who attained to much distinction.

WILLIAM N. JEFFERS was too important a man in West Jersey, for many years, to be overlooked. He was born in the State of New York, and after being admitted to the bar in that State, as I understood from himself, went to New Orleans, in the employ of John Jacob Astor. After a short stay there, he went to Cincinnati, and undertook to practice as a lawyer; but soon became involved in some transaction which occasioned an indictment to be found against him in the criminal court there, for the forgery or falsification of a bond. He was, however, permitted to put in bail of a nominal character, and to leave without a trial.

He came to New Jersey about the year 1813, and after a short residence in Mount Holly, where he secured the friendship and patronage of Judge Rossell,

who remained his warm friend as long as he lived, he was in 1814 examined and licensed as an attorney of this State, and took up his residence in Salem, and in 1817 he was admitted as a counselor. In 1834 he was called to the degree of sergeant. He was never a well read lawyer, but had some remarkable characteristics. He was a very handsome man, and distinguished for polite manners and a winning address. Soon he acquired a large and lucrative practice as a lawyer; and as an advocate before a court of common pleas or a jury, was a most formidable adversary; and he had the faculty of always retaining his clients, who seemed never, even if worsted, to attribute blame to him.

He soon engaged in politics, taking the democratic side. In 1827, and in several years afterwards, he was elected a member of the Assembly, and in 1829 was a candidate in the caucus of the Jackson members for the situation of governor, but did not succeed in obtaining the nomination. He was also named for the senate of the United States, and at one time confidently expected to succeed. Salem has always been a warmly contested county, sometimes on the one side and sometimes on the other. Mr. Jeffers was one of the first who engaged personally in canvassing for votes, now so common as to occasion no surprise, then considered unbecoming. He was accused, too, of commencing the free use of money; and it is certain that although he had warm personal friends, he contrived to excite equally violent opponents. He had much to do in the early management of the Salem Bank, originally chartered in connection with a steam flour mill, and in setting up a manufacturing company in the name and under the direction of a brother, being

accused of fraudulent transactions which occasioned a legislative investigation.

In the early part of Jackson's administration, he was appointed minister to one of the South American republics, and got so far as Mobile on his way to the mission. But in the mean time some of those persons whose hostility he had provoked, procured a copy of the old indictment against him, and he was recalled before he left the country. This occasioned him to renounce politics, and soon he removed to Camden, where he resided and was actively engaged in his profession, holding no other office but prosecutor of the pleas, until his death in 1853, at the age of about sixty-five years.

JOSIAH HARRISON was born in Essex County in the year 1776 ; graduated at Princeton in 1795 ; was licensed as an attorney in 1800, and as a counselor in 1803. After teaching a classical school for a few years at Deerfield, in Cumberland County, he settled as a lawyer in Salem, where he married a lady of great respectability and worth.

He was a man of small stature, and by no means strong in mind, but had a respectable business as a conveyancer and attorney. The most remarkable circumstance in his life was his connection with the will of John Sinnickson, a citizen of Salem, who died without descendants, leaving a large property, consisting principally of real estate, about the year 1815, whose will he drew and witnessed. The contest about this will lasted several years, was of a very exciting character, and divided the society of Salem into two very hostile parties, making breaches in very respectable families which are hardly healed to this day. The

principal opponent of the will was Dr. Rowan, who married a niece. Mrs. Harrison was also a niece, and there were several other nephews and nieces.

Probate of the will was refused by the orphans' court, and upon an appeal to Governor Mahlon Dickerson, as judge of the prerogative court, he affirmed this decree. Besides Mr. Jeffers and Joseph M'Ilvaine, who were counsel adverse to the probate, and Charles Ewing and Richard Stockton, counsel for Harrison, Joseph R. Ingersoll and Alexander J. Dallas (father of vice-president George M. Dallas) were employed, and received large fees. The last case in which Mr. Dallas spoke was this, he having been taken ill in Trenton, and living only a short time after he reached his home in Philadelphia.

Mr. Harrison then removed his residence to Philadelphia, and filed a bill in the circuit court of the United States for the establishment of the trusts in the will. An issue of will or no will being ordered, the case was brought on before Judge Washington and a very intelligent and select jury, who, after a protracted trial, rendered a verdict establishing the will. The case is reported in 3 Wash. C. C. R. p. 580, *Harrison vs. Rowan*. The opinion of Judge Washington, especially in reference to the question of testamentary capacity, has been more quoted and relied on, even in England, than any other with which I am acquainted. A motion for a new trial being made, and argued by Ewing and Stockton for Harrison, and J. R. Ingersoll and Southard for Rowan, was decided in 1820; 4 W. C. C. R. 32. Judge Washington declared himself perfectly satisfied with the verdict; but as Judge Pennington, who sat with him, was not entirely satisfied, a new trial was ordered. The

parties then compromised, and allowed a decree to be entered establishing the will, releases and other papers being executed by the heirs and devisees. A life estate was thus settled on Dr. Rowan, who lived to extreme old age, and died only about two years since.

After this trial, Mr. Harrison, whose wife had in the mean time died, resided several years in Camden, and carried on business as a printer. During this time he was reporter of the supreme court. He removed to Salem, and died there in the year 1865, at the advanced age of eighty-nine years.

ALPHONSO L. EAKIN was a lawyer in Salem about forty-five years, who was distinguished only as being one of the most careful and accurate attorneys in the State; and who by steady industry, careful collection of costs, and the art of compounding interest, accumulated a large fortune. He died in 1867.

FRANCIS L. MACCULLOCH was the son of George Macculloch, of Morristown, who was a Scotchman, and was born in 1801, before his parents arrived in America. He was licensed as an attorney in 1823, and in 1826 as a counselor. He settled in Salem, and resided there till his death in 1859. He was a very fair lawyer, but confined his business almost entirely to the County of Salem, and such cases originating there as required to be decided in the courts at Trenton. He was an efficient prosecutor of the pleas two or three terms, and was justly considered a safe and reliable counselor, and of undoubted integrity. His business was very respectable; and besides affording him a handsome competence, enabled him to leave a sufficient support

to an only daughter, who, however, did not survive him many years.

RICHARD P. THOMPSON was born in Salem in the year 1805. He studied law with William N. Jeffers, and was licensed as an attorney in 1825, and as a counselor in 1828. He resided in Salem until his death in 1859.

Although never entitled to rank as a well instructed lawyer, Mr. Thompson was, within the sphere of his legal knowledge, a very adroit and respectable advocate. His expertness in the trial of causes and in the transaction of business was very great, and for several years his practice was large and lucrative. He prosecuted the pleas of the State for several years with great success. While holding this latter office, he was appointed by Governor Haines attorney-general of the State, to fill the vacancy occasioned by the death of Attorney-general Molleson. When this temporary office expired, he resumed the duties of prosecutor, and was met by a writ of *quo warranto* sued out by the late Judge Clawson. The supreme court decided that by the acceptance of the office of attorney-general, the office of prosecutor was vacated, the two offices being incompatible. Although as his counsel I was dissatisfied with this decision, on the ground that admitting the two offices to be incompatible, it was the office of attorney-general that could not be legally held, it was not thought advisable to carry the case into the court of errors, Mr. Clawson having relinquished all claim to the fees received as prosecutor.

In 1852 he was appointed by Governor Fort attorney-general; and being confirmed by the senate,

held the office the full term. He succeeded, too, in inducing the legislature, by the act passed in 1854, to place the office upon its present respectable footing, relieving the attorney-general from the necessity of taking upon himself the ordinary prosecution of criminals, giving him a respectable salary, and extra compensation for his aid in all extraordinary cases.

On the last day of the year 1852, he carried through the prosecution of Treadway for the murder of his wife in a manner that strikingly contrasts with many modern cases of this kind, and therefore deserves special mention. The case was well tried on both sides. The court of *oyer and terminer* of the County of Salem, for this trial, was opened at nine o'clock in the forenoon ; thirty witnesses were examined, the case was ably summed up on both sides, Mr. Macculloch being the counsel for the defendant ; the jury retired at ten o'clock in the evening, and at eleven returned with a verdict of guilty of murder in the first degree. The criminal afterwards confessed his guilt, and was executed.

Although the evidence was circumstantial, it was entirely satisfactory. The defendant, several days before he committed the crime, had been heard to threaten it ; he was shown to have had a gun, and to have purchased powder and buckshot in the morning, the shot precisely of the kind extracted from the body of his victim ; he was shown to have been seen, late in the afternoon, with his gun in the neighborhood of the house where his wife was. She stood near a window, in the evening, employed at a table on which there was a lamp, when she was shot through the window, several buckshot penetrating her body and heart, so that she ran into an adjoining room, fell

down, and immediately died. The place where the person who shot her stood was easily determined, and upon being examined the next morning, a slight rain having fallen during the night, the paper wadding of the gun was found discolored, but whole, and this upon being pressed smooth, exactly fitted the torn part of a newspaper found in the criminal's pocket. The attorney-general had made himself fully acquainted with all the circumstances of the case, and had arranged the evidence so that each witness testified to the material facts known to him, and nothing else. No case ever tried before me, during an experience on the bench of fifteen years, was better conducted, or more satisfactory in the result.

An action involving the title of a tract of land situate in the County of Atlantic, was tried before me, which I take this opportunity of mentioning, because the value of genealogical inquiries was shown in a very remarkable manner. Mr. Robeson, now secretary of the navy, and Mr. Voorhees of Camden, were counsel for the plaintiff, and Mr. Bradley, now one of the justices of the supreme court of the United States, and Mr. Browning of Camden, were for the defendant. The case was contested with great zeal and ability on both sides, and lasted ten days, resulting in a verdict for the defendant.

The plaintiff claimed under an original survey made by one Thomas Wanton in the year 1750. In support of his title a very handsome parchment deed was produced, which purported to have been made by one Thomas Wanton in 1832, described as sole heir at law of the original Thomas Wanton deceased, and was certified to have been acknowledged before a commissioner at Jersey City. The commissioner was dead, but it was admitted that his signature was genuine.

This deed was attacked on behalf of the defendant as a forgery, or at any rate, executed by a fictitious personage. A Mr. Gould, of Hudson County, New York, a gentleman of great intelligence and respectability, was produced, who testified that he was a descendant of the original Thomas Wanton, and having a daughter named Mary Wanton Gould, about to be married, he had without any knowledge of or reference to the property in New Jersey, made a thorough investigation of the genealogy of the Wanton family, who were at one time quite distinguished in Rhode Island, where it appeared the original owner of the land lived at the time he had the survey made. He had been able very satisfactorily to trace every branch of the family down to the living descendants, and fully disclosed the sources of his information, thus proving as completely as it seemed possible in any case to establish a negative, that no such man as was described to be the maker of the deed of 1832 ever existed. His testimony was corroborated by another member of the same family, and the plaintiff being unable to produce the slightest evidence in support of the deed, the jury had no hesitation in rejecting it as spurious. Indeed it afterwards appeared that the plaintiff had been himself imposed on, having no suspicion of the genuineness of the deed until the disclosure of the trial showed its true character.

ASA WHITEHEAD, of Newark, was licensed as an attorney in 1818, as a counselor in 1821, and was one of those called to the degree of sergeant at law in 1837, after which time this degree ceased to be conferred. He was the son of Silas Whitehead, who was appointed in 1817 clerk of the County of Essex, but

who died the next year. The son was commissioned by the governor to fill the vacancy, and at the meeting of the legislature in 1819 he was regularly appointed his successor. Being reappointed in 1824, he held this office ten years. Connected with the Pennington family by marriage, his polities were like theirs, democratic, until the contest between Adams and Jackson, after which he became a Whig, and continued an active and influential supporter of that party as long as it existed.

His office of clerk expiring in 1819, when the Jackson party were largely in the majority and political feeling was very strong, he failed to be reelected at the moment, very much to his regret. But I remember hearing Chief Justice Ewing remark at the time that it would prove a great benefit to him, for the reason that although he did not seem himself to be aware of it, he had the ability to make a first class lawyer, and now he would be obliged to rely upon his profession. The opinion thus expressed proved to be entirely correct. It was not long before Mr. Whitehead took rank as a safe counselor and an able advocate, so that during the last twenty years of his life he stood, if not at the head of the profession in the northern part of the State, yet among those relied upon in all important cases.

In the years 1833 and 1834 he was a member of the Assembly, and in the year 1848, after the adoption of the new constitution, he was chosen a member of the state senate for three years. Of unimpeached integrity, and thoroughly imbued with the conservative spirit of the old school politicians, he exercised a salutary influence in legislation, and was active in promoting the success of the Whig party. He was the

leading member of the delegates from this State to the Whig Convention of 1840, and united with them in voting for General Scott, as I have heard him say, without even consulting Mr. Southard, upon whom Mr. Clay laid the blame of their not voting for him, as he expected. Although he did not favor the selection of General Harrison as the Whig candidate for the presidency, partly as I have reason to believe because he knew his physical and mental strength had begun to wane, he cordially supported him at the election, and aided materially in giving him the vote of this State. He died universally lamented in the spring of 1860.

JOSEPH W. SCOTT, who had long stood at the head of the list of counselors, but who had for many years ceased to appear among us at the bar of the court, ended his mortal career at the great age of nearly ninety-three years, as I was about to commit these reminiscences to the press.

Colonel Scott, as he was usually called, deriving his title from an appointment years ago as one of the staff of the governor of this State, was a remarkable man. Although, perhaps in consequence of a certain instability of character, which caused him often to disappoint the expectations of his friends, he never attained to that distinction which his talents and acquirements seemed to promise, he was a learned lawyer and a brilliant advocate. During the last fifteen or twenty years he has been but little known, except as president of the Society of the Cincinnati, at whose meetings and dinners on the Fourth of July, he never failed to appear, and where he continued to preside with a grace and dignity which were con-

spicuous even in his extreme old age. The reverence with which he was accustomed to announce the never omitted toast, "To the memory of Washington," always received by the society standing and in silence, and the heartfelt eloquence with which year after year he was accustomed to introduce it, will not soon be forgotten by those whose privilege it was to be associated with him on these occasions. He well remembered, and often told how, when a little boy, playing in front of his father's house, a gentleman called and asked him.

"Is Dr. Scott at home?"

"No, sir!"

"Mrs Scott?"

"Yes, sir!"

"Please go in and tell your mother that General Washington would like to see her."

The boy, as he said, gazed at him eagerly, much impressed with the idea that he was only a man and much like other men of imposing presence!

He was the grandson of John Scott, who came to this country from Scotland at an early period, and was an elder in the old Neshaminy Presbyterian Church, in Bucks County, Pennsylvania. His father, Dr. Moses Scott, removed from the paternal residence to New Brunswick before the War of the Revolution, and was in full practice there many years as a physician, living until near the age of eighty-three. He was a rigid Scotch Presbyterian elder, and a most devoted Christian, who trained his son, a great favorite, by religious precepts and a virtuous example, for duty and usefulness, enjoining upon him, when he commenced his profession, "My son, however busy, never turn a deaf ear to the widow and the orphan;" and this injunction was not forgotten, if others were.

Dr. Scott was in the battles at Princeton and Brandywine, and by virtue of a special act of Congress became the senior physician and surgeon of the general hospital in the middle district, and was long connected with and an intimate friend of General Washington. He was also a personal friend of General Joseph Warren, after whom he named his eldest son. This son dying in infancy, he continued the name to his second son, the subject of this notice, who was born November 28th, 1778.

After the usual preliminary education in the schools at the place of his birth and at Elizabethtown, he was sent to Princeton, and graduated there in 1795, before he had attained the age of seventeen years. He was a student under the presidency of Dr. Witherspoon, and in 1808 attended the inauguration of Dr. M'Cosh, thus with his associate, Judge Herring, then the two oldest living graduates of Nassau Hall, the links between two distinguished men invited from Scotland to preside over this institution. On this occasion he received the honorary distinction of LL. D.

For a short time he studied medicine with his father, and then entered upon a course of study in theology ; but soon he abandoned the design of being either a physician or a minister, and determined to become a lawyer. He studied law with General Frelinghuysen, was admitted to the bar as an attorney in 1801, as a counselor in 1804, and was made a sergeant at law in 1816. He married soon after he was licensed as a counselor, and settled in New Brunswick, and had a large practice. He was several times voted for as attorney-general of the State and as judge of the supreme court, but I think never held any office but that of presidential elector in 1824 (when he

voted for General Jackson,) and prosecutor of the pleas of the State for the county of Middlesex. He was profoundly learned in the law, and apt at tracing principles to their source; had a wonderfully retentive memory, and was sometimes truly eloquent. The last time he appeared in court was as counsel for Donnelly (2 Dutch. 463), on his trial for murder in 1857, when he was nearly eighty years old, and his argument against the validity of the indictment, which I heard, was creditable to his learning and ability, especially when it was remembered that he had practically given up his profession nearly twenty years. It is stated by the Rev. Mr. Jewett, in the address delivered at his funeral, in May, 1871, I have no doubt correctly: —

“ He was an accomplished scholar, well versed in the Latin classics, and accustomed frequently to correspond with his friends in the Latin language, even to the last year of his life. With the Westminster Catechism in Latin, as well as English, he was familiar; to him it seemed the work of logical and master minds, the ablest uninspired work ever written. His Latin Bible was always by his side, his daily companion. He loved it; in my pastoral visits with him it was almost always in his hand and ready for reading or reference. He was a fine *belles-lettres* scholar, and had ‘the pen of a ready writer.’ He was well versed in English literature, and familiar with the old poets.

“ We stand to day by the side of one who looked upon and was familiar with the forms of generals, statesmen, and theologians, men whose names are sacred to America and the world. We stand by the coffin of one who served in the War of 1812; of one who stood by the bedside of the dying Hamilton (that brightest intellectual star in the galaxy of patriots); of one who heard, amongst divines, men great in the history of the American Church,— Witherspoon, Samuel Stanhope Smith, John M. Mason, Livingston, and Bishop Hobart. Not a few of the great men of the church and in the state were his warm personal friends. So attached to him was Dr. John M. Mason, that ‘prince of preachers,’ that, when shattered

in health and broken in intellect, he wandered away from home, his son came in search of him to this city, and found him at the residence of Colonel Scott."

Joseph Warren Scott was received as a member of the New Jersey Society of the Cincinnati, as the representative of his father, Surgeon Moses Scott, in 1825. In 1832 he was chosen assistant-treasurer of the general society, and in 1838 the treasurer-general. In 1840 he became the vice-president of the state society, and from 1844 until his death was the president.

A letter from Hamilton Fish, president-general of the Cincinnati, to Colonel Alexander Hamilton, upon receiving information of his death, notices very appropriately a conspicuous trait of Colonel Scott's character: —

"Your telegram announces the death of one who, full of years, closes a life of much activity and marked ability. Genial and bright in intellect, fourscore and ten years had not, when last I met him, quenched the ardor of his warm and impulsive nature; and I shall ever remember Colonel Warren Scott as one of the most attractive talkers and agreeable companions whom it has been my fortune to meet."

Having now reached the close of these reminiscences of a protracted life, I must be permitted to remind those who shall read them, whether they have only commenced the voyage of life buoyant with youthful hopes, or may be still absorbed by the engrossing cares of active business, or have passed the meridian of their days, that several of those I have commemorated died even before they had attained the full maturity of their powers, while others were spared beyond the allotted three score years and ten; and many of them

“ Once trod the paths of glory,
And sounded the depths and shoals of honor ; ”

but of each one, with only two exceptions, it has been recorded, He died ; and of every one whom I now address, it will be said at an unexpected hour, He has departed this life.

“ O listen, man !
A voice within us speaks the startling word,
‘ Man thou shalt never die ! ’ Celestial voices,
Hymn it round our souls ; according harps,
By angel fingers touched, when the mild stars
Of morning sang together, sound forth still
The song of our great immortality ;
Thick clustering orbs, and this our fair domain,
The tall dark mountains and the deep-toned seas,
Join in this solemn universal song.

“ O listen ye, our spirits ; drink it in
From all the air ! ’Tis in the gentle moonlight ;
Is floating in day’s setting glories ; Night,
Wrapped in her sable robe, with silent step
Comes to our bed, and breathes it in our ears ;
Night and the dawn, bright day and thoughtful eve,
All time, all bounds, the limitless expanse,
As one great mystic instrument, are touched
By an unseen living hand, and conscious chords
Quiver with joy in this great jubilee ;
The dying hear it, and as sounds of earth
Grow dull and distant, wake their passing souls
To mingle in this heavenly harmony.”

APPENDIX.

TITLES TO LAND.

TI TLES to land in New Jersey are derived from the English crown. It is a principle of law, recognized by all the European governments, that an uninhabited country, or a country inhabited only by savages, of which possession is taken under the authority of an existing government, becomes the property of the nation taking the possession. According to the theory of the British constitution, all vacant lands are vested in the crown, as representing the nation ; and the exclusive power to grant them resides in the sovereign, as a branch of the royal prerogative. The Indian title to the land in America was to some extent recognized, but the government, here and in England, has always asserted the exclusive right to extinguish that title, and to give a valid title to settlers by its own grant of the soil. 8 Wheat. R. 543.

Individuals were forbidden to purchase land from the Indians, without the consent of the English proprietors, at an early date, both in East and West Jersey, and after the surrender of the government to the crown. Deeds from Indian claimants are held by some of the present owners in both divisions of the State ; but unless patents or surveys were also obtained, the legal title to the premises rests upon possession, and not upon the deeds. The general proprietors were careful to purchase the land of the Indians, and except in those cases in East Jersey where grants were made subject to an extinguishment of the Indian title, they refused to allow grants or surveys until this was done. Every foot of the soil claimed by the original inhabitants of this State, has been obtained from them by a fair and voluntary purchase and transfer.

Without going into a full detail of the several conveyances and releases contained at length in Leaming and Spicer's " Grants and Concessions," commencing with the grant from King Charles II. to

his brother, the Duke of York, in 1663, it may be stated that the title having been vested in Carteret, Penn, Lawry, Lucas, and Byllinge, these five persons executed what is known as the Quintipartite deed in 1676, whereby the eastern half of the province was conveyed in severalty to Carteret, and the western half to the other four.

After the division, East Jersey was conveyed to twenty-four proprietors; and West Jersey was sold in hundredths. Fenwick, to whom a conveyance had been made in trust for Byllinge, and who himself executed a long lease to Eldridge and Warner, was recognized as entitled to ten hundredths, and other persons became proprietors of ninety hundredths; so that a full proprietary right in East Jersey is a twenty-fourth part of that province, and in West Jersey, it is a hundredth part.

The original grants were considered by the proprietors as conveying a right of government as well as the soil, and they instituted separate governments; but in 1702 joined in surrendering that right to the crown. The title to the soil was not surrendered, and continues to be derived through the original proprietors, by regular descent or purchase, to the present day.

Much difficulty was experienced in settling the division line, and indeed it cannot be said that the dispute is even now at an end. It was held in the case of *Cornelius vs. Giberson*, 1 Dutch. 1, that the line run in 1743, called Lawrence's line, running from the mouth of Little Egg Harbor River to the River Delaware, at the latitude of $41^{\circ} 40'$, is the true line.

At the commencement of the settlement of East Jersey, land was given to settlers, masters and servants, males and females, in designated quantities, according to the number of each, subject to an annual quit-rent, and the extinction of the Indian title. The lands thus granted were called "head lands," and included very considerable quantities, this being the usual tenure until 1685, and, in some few cases, still later. A warrant, signed by the governor and major part of the council, was directed to the surveyor-general, who made his return of the survey, and both were recorded by the register. A patent was thereupon issued, under the great seal of the province, which was signed by the governor and council, and duly recorded. It would seem, also, that patents were issued by the governor and council to cover lands claimed under the Dutch government, and for other special reasons.

Shortly after their purchase, several of the twenty-four pro-

prietors sold undivided shares of their several proprietaries to others, some of whom came into the province. It then became necessary to provide for dividing the lands remaining in common, among themselves, in proportion to their rights. A written instrument was accordingly signed in 1684, establishing a council of proprietors, which was slightly modified in 1725. This council consists of at least ten members, owning or holding proxies for eight full shares, each full proprietor having one vote, but no one more than twelve. It continues to meet at Perth Amboy, and has the general management of the proprietary interest, the appointing of dividends to the particular proprietors, the examination of the respective rights, and granting warrants of survey to their surveyor-general, thus appropriating to each owner his due quantity of acres.

Patents continued to be issued until the surrender as before, except that in patents to proprietors no quit-rents were reserved. After the surrender of the government, whereby the governor ceased to be an officer of the proprietors, and they had no longer the control of the great seal, patents ceased. Such as were granted are on record in the books pertaining to the government of East Jersey, now in the secretary of state's office at Trenton, and also in the land office at Amboy. No patents were issued in West Jersey.

The first dividend to each full proprietor of East Jersey was of ten thousand acres; persons holding shares or fractions of a share, or a conveyance from a shareholder or his grantees of a specified number of acres, having a right to locate such number of acres as they thought proper, not exceeding their due share of the dividend, wherever they could find land not before appropriated, and of such dimensions as interest or caprice might dictate. A register being kept of all titles to unappropriated land exhibited to procure a warrant of survey, it could thus be ascertained what land was surveyed to claimants under each proprietary share. Additional dividends have from time to time been declared, amounting in all to fourteen, and covering in all (including the "pine dividends," which at first gave only a right to cut the timber, but a part of which was afterwards exchanged for rights to a full title) about six hundred and thirty-five thousand acres. To this number must be added fifty-four thousand acres in Sussex County, run out and allotted to the proprietors. So that it would seem, that less than seven hundred thousand acres of land remained open to survey in East Jersey, after the council was formed. The unlocated land, at present, cannot be of much value, and probably exists only in small

parcels; except, perhaps, in the territory so long in dispute between the two divisions of the ancient province. The register appointed by the council issued warrants of survey to those exhibiting a title to unlocated rights, and the land being surveyed by the surveyor-general or one of his deputies, the survey is certified to, inspected by the council, and ordered to be recorded. These records are preserved in the office at Perth Amboy.

In West Jersey, the proprietors, freeholders, and inhabitants established and signed certain concessions and agreements in 1676, regulating the government and the mode of acquiring a title to the land. "Head lands" were to be granted to settlers, and commissioners were appointed to regulate the setting forth and dividing them. Afterwards commissioners were elected by the legislature. The quantity of land appropriated in this way does not appear to have been large. It was originally intended to run out the province into tenths, fronting on the Delaware; but this was never fully carried out, counties having been established as soon as the convenience of the inhabitants required. Burlington appears to have included two of the original tenths, Gloucester one, and Salem one.

In 1678 the proprietors resolved to constitute a proprietary council, to consist of representatives, elected yearly from among themselves, at first eleven, afterwards nine, five of whom were to be elected in Burlington and four in Gloucester, any five of whom are a quorum; and so they continue to be elected. Salem tenth did not at first come into this regulation, Fenwick being ambitious to act as the sole lord proprietor; but it was soon included, and, after his death, a proprietor residing therein was often elected in Gloucester. According to an ancient usage, the origin of which is now unknown, the proprietor of a thirty-second part of a hundredth has the right of voting, and being elected. The owner of any specified number of acres, having no interest in the undivided remainder, has no right to vote. Many of the original proprietors never came into the province, and in consequence of the failure of heirs claiming rights, only about twenty persons are now known to be proprietors, some of whom own several hundredths, while others have only the thirty-second of a hundredth. They meet stately at Burlington; but as the unlocated property is of but little value, and the business, and consequent fees and perquisites, become less and less every year, it is probable that the time is not very distant when they will cease to act, and some new mode of preserving and authenticating their valuable records will have to be prescribed by law.

A dividend of each proprietor's share was first fixed at five thousand two hundred acres, but it was soon enlarged to twenty-five thousand acres, of which Fenwick and his assignees were credited with ten shares. Six additional dividends have been made, assigning, in all, thirty-five thousand acres to each, the owner of a fractional part being, of course, entitled to his proportion. These dividends include much more land than is found within the limits of West Jersey; but a large number have never been claimed, and it is not known who are entitled to them. The number of acres actually located cannot be ascertained. In many cases, the same lands have been covered by different surveys.

After the right to head lands ceased (with the exception perhaps of a few cases of specified lots sold by some of the proprietors in Burlington city and elsewhere, which the council has left undisturbed), titles in West Jersey are derived from some one of the original proprietors of the hundredths. Regular deeds of conveyance are made (formerly by lease and release, in modern times by deeds of bargain and sale) either of a fractional part, or of a specified number of acres. A proprietor, or a grantee under him, upon presenting his title to the council, obtains an order for a warrant, which is signed by the clerk and recorded, and which authorizes the surveyor-general or his deputy to survey a specified number of acres, from any of the unappropriated lands. By virtue of this warrant, a deputy surveyor, who is a sworn officer, runs out a survey including any number of acres, not exceeding the number specified, as the owner chooses to have it, wherever it is supposed other surveys do not cover the ground. The deputy having returned his survey reciting the warrant and the deductions of the title, with a map, to the surveyor-general, he certifies it to the council, and being by them inspected and approved, it is ordered to be recorded.

If other persons, claiming surveys before recorded, think their boundaries encroached upon, they are allowed to caveat against recording the new survey, and the council enters into an investigation of the matter, agreeably to their prescribed rules. Should they refuse to allow the survey, it fails. If they order it recorded, the question of interference is still open in the courts, who decide the questions involved, upon such principles of law as are applicable to other grants and conveyances. Substantially the same mode of proceeding is adopted in East Jersey.

During the early years of the settlement of West Jersey, there was much irregularity in the mode of making surveys. Fenwick

brought over his children and servants, with other settlers, to Salem, and undertook not only to grant manors and lands, but to establish a separate government. None of his grants for specific[®] tracts or parcels of land were recognized as valid, except the land and marsh laid out for Salem town (Leam. & Spi. 461). Grants by him and his executors, and by his assignees, of undivided rights, were received by the council, to the extent of his ten dividends, as a sufficient foundation for warrant of survey. Many of them were not presented to the council, and were not recorded in the office at Burlington; but are found in a book called "Revel's Surveys," now in the secretary of state's office at Trenton, and appear to have been made under the direction of James Nevill, Fenwick's secretary, and afterwards agent of William Penn, a large proprietor in his own right, and as one of Fenwick's executors. Others are contained in a book in the secretary's office, called "Leed's Surveys."

A rule was adopted at an early date, that surveys should not extend to both sides of a navigable stream. The communication to different parts of the province was most easily made by water. Between 1687 and 1700, surveyors seem to have been sent, by several of the proprietors, into the southern part of the State, and ran out (as the tradition is, by means of a mariner's compass, and often on horseback) large surveys of from five to twelve thousand acres each, on the most accessible rivers and creeks. They were often not recorded; but in some cases, maps were filed. Most of these tracts were afterwards regularly resurveyed and recorded; but they seem to have been allowed to date from the original survey. One of these surveys for five thousand acres, lying on the Cohansey, called by the proprietor "Winchcombe Manor," after a manor of that name which he owned in England, was carried to London, retained there, and not recorded until 1764, when it was laid before the council, and they being satisfied, as the record states, that it had been made agreeably to the custom prevailing in the Salem tenth, approved it and ordered it recorded. Several lawsuits, as might be expected, grew out of this procedure, before and after the Revolution.

An allowance of five acres in the hundred was made in West Jersey for highways, and in East Jersey of six; which accounts for the fact that lands were so long taken in this State for roads, without compensation to the owner. For many years, the surveys called for fixed monuments, and the measurement of the lines being returned much shorter than they were, great frauds were perpe-

trated, by making the surveys to include more land than the number of acres specified. This led to orders, about 1786, requiring the surveyors to establish a beginning corner, and then to confine themselves to strict course and distance. This remedied the abuse to some extent, but not entirely; it being found, in many cases, that although no fixed corners were specified in the return, they were in fact marked on the ground, and being respected by other surveyors and proprietors, they were, after a lapse of time, necessarily recognized by the council and the courts as established monuments, although a large overplus of land became thus included in the survey.

An act of the legislature, passed in 1719, which provided for running the boundary line between East and West Jersey, directed, that the surveyors-general of each division should hold a public office in Perth Amboy and in Burlington, where all surveys should be kept, and that all surveys should be recorded within a prescribed time in those offices, or be forever void. It is stated by Allinson, in a note to this act (Allin. Acts, 31) that, " notwithstanding the extensive import of these words, it has been held that such surveys shall only be void and of none effect against such persons who, by reason of the non-record thereof, were ignorant of it; and therefore no person, who knew of the survey, shall avail himself of its not being recorded, such not coming within the mischief or remedy of the act."

It must be understood, that a survey, duly recorded, does not properly speaking constitute the title of the owner, but is only evidence that he has severed a certain number of acres from the common stock, his title to which rests upon his deeds from the proprietors. 1 Halst. R. 63. Formerly, when it became necessary to prove the title, the regular chain of deeds, in some cases even from the king down to the claimant, were produced in evidence, as the only valid foundation for the survey. In process of time, the courts took judicial notice of the original grants, as matters of authentic history; and since the act of 1787 (Title Limitation, 3, Nix. Dig.) the record of a survey, duly inspected and recorded, is received as *primâ facie* evidence of a good title. Until the act of 1838, surveys were proved by producing a witness who could swear that he had compared the copy with the original record.

For many years, the proprietors claimed to own the land covered by the water of navigable rivers and bays, and frequently made grants or authorized surveys, which extended to low-water mark, and in some cases further. It has, however, been finally settled

that the rule of the common law of England, which limited the title under grant to the ordinary high-water line, the shore below that line and the soil under the water belonging to the crown, or the state, is the law of New Jersey, and that consequently all titles under the proprietors extend only to the ordinary high-water mark, except in cases where the owner of the upland has reclaimed the land originally overflowed, by wharves or banks, and excepting all established shore fisheries, which are held to be private property. 16 Peters R. 367. 3 Zab. 624. 1 Dutch. 527. 5 Vroom.

Owing to the fact that deeds were not commonly recorded until about the commencement of this century, and some are not now recorded, and that old deeds and muniments of title are seldom preserved for any great length of time in this State, our statutes of limitation must be regarded as a very important protection to titles. Without their aid, it would be difficult, if not impossible, to sustain many titles which are now perfectly valid. Before the Revolution, there was no statute of limitations, barring a recovery of lands, recognized by the judges of the province, who were in the interest of the proprietors, except the first section of 32 Hen. VIII., which required sixty years adverse possession to limit an action of ejectment by the holders of a paper title. 2 Halst. 10. In 1787, this provision was reënacted, and an adverse possession of thirty years, under a deed or survey, was made a bar, which provisions are still in force.

The act of 1799 went further. It was then enacted (Title Limitation, 16, 17, Nix. Digest) that no person shall enter into, or sue for lands, but within twenty years after his right or title shall accrue, provided that the time during which the person who had such right or title shall have been under the age of twenty-one, *feme covert*, or insane, shall not be computed as part of the said twenty years. This act applies to the general proprietors as well as to others. 1 Dutch. 1.

It has been always understood that the twenty years commence when the possession of the defendant, or of the person under whom he claims, first became adverse, as against the then owner, under whom the plaintiff claims. For a long time after this act was passed, it was supposed that the whole time during which the plaintiff, or those under whom he claimed, happened to be under age, a married woman, or insane, between the beginning of the adverse possession and the commencement of the suit, was to be deducted from the time that had elapsed, so that some person of age, un-

married and sane, must have existed and been capable of entering on the land, under the plaintiff's title, for twenty years before the action was brought, to bring the case within the protection of this statute. 4 Wash. C. R. 691. But it was decided by our supreme court in 1836, that the twenty years are to be computed from the time when the plaintiff, or those under whom he claims, were first of age, unmarried, or sane, and that any subsequent disability is not to be deducted. *Clark vs. Richards*, 3 Green, 347. This decision, although the soundness of it has been, not without reason, much questioned, has now remained the rule of property more than twenty years, and was afterwards held to be not only of binding authority, but originally correct, by the circuit court of the United States. *Roberts vs. Moore*, 9 Amer. L. Reg. 25.* It may therefore probably be considered as the established law of the State, and in many cases the best security of titles originally good, the evidences of which have been lost. Public policy certainly requires that claims to land should be prosecuted within a reasonable time; it being better that a title once good should be defeated by a delay of twenty years to prosecute it, than that titles should be rendered insecure by rendering them liable to dispute between rival claimants for an unreasonable length of time. By the law, as it now stands, possession, as the owner for twenty years, confers a good title, except as against a person who, when the possession commenced, was an infant, a married woman, or insane, and when twenty years have not elapsed since such person was of age, unmarried, or sane.

* See *infra*, p. 369.

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